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Volume I

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

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ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 24, 1947
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UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

In the Matter of
The Cement Institute, an unincorporated association, et al. } Docket No. 3167.

COMPILATION OF COMPLAINT AND ANSWERS.

By September 21, 1937, the final date for filing answers to the complaint, seventy-one answers were filed with the Commission. One of these was the answer of The Cement Institute, its officers and trustees. Of the seventy-five producing respondents, each of sixty-nine companies filed a separate answer; one answer was filed on behalf of six affiliated companies (Arkansas Portland Cement Company, Colorado Portland Cement Company, Nebraska Cement Company, Oklahoma Portland Cement Company, Three Forks Portland Cement Company and Union Portland Cement Company); two companies (Idaho Portland Cement Company and Monarch Portland Cement Company) filed amended answers on October 7, 1937; and one company (Spokane Portland Cement Company) filed an amended answer on December 1, 1937.

The compilation of the complaint and all of the answers thereto is arranged in the following form:

(a) A paragraph of the complaint;

(b) The answer of the respondent, The Cement Institute, its officers and trustees, to that paragraph of the complaint;

(c) The form of answer to that paragraph of the complaint which was used by a substantial number of the respondents with a list of the petitioners using that form of answer and footnoted to indicate variations of substance among said answers;

(d) Any other groups of similar answers by other respondents;

(e) The answers to that paragraph of the complaint of respondents which because of their variations cannot be grouped, arranged in alphabetical order.

Abbreviations of Corporate Names.

The following list shows the abbreviations of corporate names which will be used in this compilation of answers:

Name of Company	Abbreviation
Aetna Portland Cement Company	Aetna
Alpha Portland Cement Company	Alpha
Arkansas Portland Cement Company	Arkansas
Ash Grove Lime & Portland Cement Company	Ash Grove
Beaver Portland Cement Company	Beaver
Bessemer Limestone & Cement Company	Bessemer
Calaveras Cement Company	Calaveras
California Portland Cement Company	California
Castalia Portland Cement Company	Castalia
Colorado Portland Cement Company	Colorado
Consolidated Cement Corporation	Consolidated
Coplay Cement Manufacturing Company	Coplay
Cumberland Portland Cement Company	Cumberland
Dewey Portland Cement Company	Dewey
Diamond Portland Cement Company	Diamond
Edison Cement Corporation	Edison
Federal Portland Cement Company, Inc.	Federal
Florida Portland Cement Company	Florida
Georgia Cement & Products Company	Georgia
Giant Portland Cement Company	Giant
Glens Falls Portland Cement Company	Glens Falls
Great Lakes Portland Cement Corporation	Great Lakes
Green Bag Cement Company of Pennsylvania	Green Bag Pa.
Green Bag Cement Company of West Virginia	Green Bag W. Va.
Hawkeye Portland Cement Company	Hawkeye
Hercules Cement Corporation	Hercules
Hermitage Portland Cement Company	Hermitage
Huron Portland Cement Company	Huron
Idaho Portland Cement Company	Idaho
Keystone Portland Cement Company	Keystone
Kosmos Portland Cement Company	Kosmos
Lawrence Portland Cement Company	Lawrence
Lehigh Portland Cement Company	Lehigh
Lone Star Cement Corporation	Lone Star

Name of Company	Abbreviation
Medusa Portland Cement Company	Medusa
Missouri Portland Cement Company	Missouri
Monarch Cement Company	Monarch
Monolith Portland Cement Company	Monolith
Monolith Portland Midwest Company	Monolith Midwest
National Cement Company	National
Nazareth Cement Company	Nazareth
Nebraska Cement Company	Nebraska
North American Cement Corporation	North American
Northwestern Portland Cement Company	Northwestern
Northwestern States Portland Cement Company	Northwestern States
Oklahoma Portland Cement Company	Oklahoma
Oregon Portland Cement Company	Oregon
Pacific Portland Cement Company	Pacific
Peerless Cement Corporation	Peerless
Pennsylvania-Dixie Cement Corporation	Penn-Dixie
Petoskey Portland Cement Company	Petoskey
Pittsburgh Plate Glass Company	Pittsburgh
Portland Cement Company of Utah	Utah
Riverside Cement Company	Riverside
Santa Cruz Portland Cement Company	Santa Cruz
Signal Mountain Portland Cement Company	Signal Mountain
Southern States Portland Cement Company	Southern States
Southwestern Portland Cement Company	Southwestern
Spokane Portland Cement Company	Spokane
Standard Portland Cement Company	Standard
Superior Cement Corporation	Superior
Superior Portland Cement, Inc.	Superior, Inc.
Three Forks Portland Cement Company	Three Forks.
Trinity Portland Cement Company	Trinity
Union Portland Cement Company	Union
Universal Atlas Cement Company	Universal Atlas
Valley Forge Cement Company	Valley Forge
Volunteer Portland Cement Company	Volunteer
Vulcanite Portland Cement Company	Vulcanite
Wabash Portland Cement Company	Wabash
West Penn Cement Company	West Penn
Whitehall Cement Manufacturing Company	Whitehall
Wolverine Portland Cement Company	Wolverine
Yosemite Portland Cement Corporation	Yosemite

INTRODUCTORY STATEMENT AND PARAGRAPH ONE OF COUNT ONE.

Complaint.

Pursuant to the provisions of an Act of Congress entitled, "An Act to Create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914, and commonly known as the Federal Trade Commission Act, the Commission having reason to believe that the respondents herein named have violated the said act of Congress, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, the Commission hereby issues its complaint stating its charges in such respect in Count I hereof.

Also pursuant to the provisions of Section 2 of an Act of Congress, approved October 15, 1914, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", commonly known as the Clayton Act, as amended by an Act of Congress approved June 19, 1936, commonly known as the Robinson-Patman Act, the Commission having reason to believe that the respondents herein named have violated the said act of Congress, as so amended, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, the Commission issues this its complaint stating its charges in such respect in Count II hereof.

Count I.

Charge Under Federal Trade Commission Act.

Description of the Respondents.

Paragraph One: The respondent, The Cement Institute, hereinafter referred to merely as "Institute", is an unincorporated association which includes as its members producers of Portland Cement, hereinafter referred to merely as "cement", located in all sections of the United States. The membership of the Institute comprises practically every producer of cement in the United States. It is a trade association formed for the promotion of the

mutual interests of its members. The Institute was organized in October, 1929; it operates through its officers, trustees, committees, bureaus and other agents. Its membership is divided into Northeastern, Southeastern, Chicago and Kansas City Divisions, each with its office. It has freight rate bureaus located at Bethlehem, Pennsylvania and Chicago, Illinois.

Respondents S. W. Storey and G. H. Reiter are respectively the President and Secretary of the Institute. Respondents Vice-President, Treasurer and Trustees, whose names are not known to the Commission, hold the said respective offices in the said Institute.

Respondent Aetna Portland Cement Company is a corporation, the place of whose incorporation is not known to the Commission, with its principal place of business at Detroit, Michigan.

Respondent Alpha Portland Cement Company is a New Jersey corporation having its principal place of business at Easton, Pennsylvania.

Respondent Arkansas Portland Cement Company is an Arkansas corporation having its principal place of business at Denver, Colorado.

Respondent Ash Grove Lime & Portland Cement Company is a Maine corporation having its principal place of business at Kansas City, Missouri.

Respondent Beaver Portland Cement Company is an Oregon corporation having its principal place of business at Portland, Oregon.

Respondent Bessemer Limestone & Cement Company is an Ohio corporation having its principal place of business at Youngstown, Ohio.

Respondent Calaveras Cement Company is a Delaware Corporation having its principal place of business at San Francisco, California.

Respondent California Portland Cement Company is a California corporation having its principal place of business at Los Angeles, California.

Respondent Castalia Portland Cement Company is a Pennsylvania corporation having its principal place of business at Pittsburgh, Pennsylvania.

Respondent Colorado Portland Cement Company is a Colorado corporation having its principal place of business at Denver, Colorado.

Respondent Consolidated Cement Corporation is a Dela-

ware corporation having its principal place of business at Chicago, Illinois.

Respondent Coplay Cement Manufacturing Company is a Pennsylvania corporation having its principal place of business at Coplay, Pennsylvania.

Respondent Cumberland Portland Cement Company is a Delaware corporation having its principal place of business at Cowan, Tennessee.

Respondent Dewey Portland Cement Company is a West Virginia corporation having its principal place of business at Kansas City, Missouri.

Respondent Diamond Portland Cement Company is an Ohio corporation having its principal place of business at Middle Branch, Ohio.

Respondent Edison Cement Corporation is a New Jersey corporation having its principal place of business at New York, New York.

Respondent Federal Portland Cement Company, Inc. is a New York corporation having its principal place of business at Buffalo, New York.

Respondent Florida Portland Cement Company is a Delaware corporation having its principal place of business at Chicago, Illinois.

Respondent Georgia Cement & Products Company is a Georgia corporation having its principal place of business at Atlanta, Georgia.

Respondent Giant Portland Cement Company is a Delaware corporation having its principal place of business at Philadelphia, Pennsylvania.

Respondent Glens Falls Portland Cement Company is a New York corporation having its principal place of business at Glens Falls, New York.

Respondent Great Lakes Portland Cement Corporation is an Indiana corporation having its principal place of business at Buffalo, New York.

Respondent Green Bag Cement Company of West Virginia is a corporation, the place of whose incorporation is not known to the Commission, with its principal place of business at Pittsburgh, Pennsylvania.

Respondent Green Bag Cement Company of Pennsylvania is a corporation, the place of whose incorporation is not known to the Commission, with its principal place of business at Pittsburgh, Pennsylvania.

Respondent Hawkeye Portland Cement Company is a

West Virginia corporation having its principal place of business at Des Moines, Iowa.

Respondent Hercules Cement Corporation is a Pennsylvania corporation having its principal place of business at Philadelphia, Pennsylvania.

Respondent Hermitage Portland Cement Company is a Delaware corporation having its principal place of business at Nashville, Tennessee.

Respondent Huron Portland Cement Company is a Michigan corporation having its principal place of business at Detroit, Michigan.

Respondent Idaho Portland Cement Company is an Idaho corporation having its principal place of business at Inkom, Idaho.

Respondent International Cement Corporation is a Maine corporation having its principal place of business at New York, New York.

Respondent Keystone Portland Cement Company is a Pennsylvania corporation having its principal place of business at Philadelphia, Pennsylvania.

Respondent Kosmos Portland Cement Company is a Kentucky corporation having its principal place of business at Louisville, Kentucky.

Respondent Lawrence Portland Cement Company is a Pennsylvania corporation having its principal place of business at Siegfried, Pennsylvania.

Respondent Lehigh Portland Cement Company is a Pennsylvania corporation having its principal place of business at Allentown, Pennsylvania.

Respondent Medusa Portland Cement Company is an Ohio corporation having its principal place of business at Cleveland, Ohio.

Respondent Missouri Portland Cement Company is a Missouri corporation having its principal place of business at St. Louis, Missouri.

Respondent Monarch Cement Company is a Kansas corporation having its principal place of business at Humboldt, Kansas.

Respondent Monolith Portland Cement Company is a Nevada corporation having its principal place of business at Los Angeles, California.

Respondent Monolith Portland Midwest Company is a corporation, the place of whose incorporation is not known

to the Commission, with its principal place of business at Los Angeles, California.

Respondent National Cement Company is an Alabama corporation having its principal place of business at Birmingham, Alabama.

Respondent Nazareth Cement Company is a Pennsylvania corporation having its principal place of business at Nazareth, Pennsylvania.

Respondent Nebraska Cement Company is a Nebraska corporation having its principal place of business at Denver, Colorado.

Respondent North American Cement Corporation is a Delaware corporation having its principal place of business at Albany, New York.

Respondent Northwestern Portland Cement Company is a Washington corporation having its principal place of business at Seattle, Washington.

Respondent Northwestern States Portland Cement Company is a West Virginia corporation having its principal place of business at Mason City, Iowa.

Respondent Oklahoma Portland Cement Company is an Oklahoma corporation having its principal place of business at Denver, Colorado.

Respondent Oregon Portland Cement Company is a Nevada corporation having its principal place of business at Portland, Oregon.

Respondent Pacific Portland Cement Company is a California corporation having its principal place of business at San Francisco, California.

Respondent Peerless Cement Corporation is a Michigan corporation having its principal place of business at Detroit, Michigan.

Respondent Pennsylvania-Dixie Cement Corporation is a Delaware corporation having its principal place of business at New York, New York.

Respondent Petoskey Portland Cement Company is a Delaware corporation having its principal place of business at Petoskey, Michigan.

Respondent Pittsburgh Plate Glass Company is a Pennsylvania corporation having its principal place of business at Pittsburgh, Pennsylvania.

Respondent Portland Cement Company of Utah is a Wyoming corporation having its principal place of business at Salt Lake City, Utah.

Respondent Riverside Cement Company is a Delaware corporation having its principal place of business at Los Angeles, California.

Respondent Santa Cruz Portland Cement Company is a California corporation having its principal place of business at San Francisco, California.

Respondent Signal Mountain Portland Cement Company is a Georgia corporation having its principal place of business at Chicago, Illinois.

Respondent Southern States Portland Cement Company is a Georgia corporation having its principal place of business at Rockmart, Georgia.

Respondent Southwestern Portland Cement Company is a West Virginia corporation having its principal place of business at El Paso, Texas.

Respondent Spokane Portland Cement Company is a Washington corporation having its principal place of business at Spokane, Washington.

Respondent Standard Portland Cement Company is an Ohio corporation having its principal place of business at Cleveland, Ohio.

Respondent Superior Cement Corporation is a corporation, the place of whose incorporation is not known to the Commission, with its principal place of business at Portsmouth, Ohio.

Respondent Superior Portland Cement, Inc., is a Washington corporation having its principal place of business at Seattle, Washington.

Respondent Three Forks Portland Cement Company is a Montana corporation having its principal place of business at Denver, Colorado.

Respondent Trinity Portland Cement Company is a corporation, the place of whose incorporation is not known to the Commission, having its principal place of business at Chicago, Illinois.

Respondent Union Portland Cement Company is a corporation, the place of whose incorporation is not known to the Commission, having its principal place of business at Denver, Colorado.

Respondent Universal Atlas Cement Company is an Indiana corporation having its principal place of business at Chicago, Illinois.

Respondent Valley Forge Cement Company is a Penn-

sylvania corporation having its principal place of business at Catasauqua, Pennsylvania.

Respondent Volunteer Portland Cement Company is a Delaware corporation having its principal place of business at Knoxville, Tennessee.

Respondent Vulcanite Portland Cement Company is a New Jersey corporation having its principal place of business at Philadelphia, Pennsylvania.

Respondent Wabash Portland Cement Company is an Indiana corporation having its principal place of business at Detroit, Michigan.

Respondent West Penn Cement Company is a Pennsylvania corporation with its principal place of business at Butler, Pennsylvania.

Respondent Whitehall Cement Manufacturing Company is a Pennsylvania corporation having its principal place of business at Philadelphia, Pennsylvania.

Respondent Wolverine Portland Cement Company is a Michigan corporation having its principal place of business at Coldwater, Michigan.

Respondent Yosemite Portland Cement Corporation is a Delaware corporation having its principal place of business at Merced, California.

All of the above-named corporate respondents are producers of cement and members of the Institute. Many of them have mills in more than one locality. They are hereinafter collectively referred to as "producing respondents".

ANSWERS.

I. Answer of The Cement Institute.*

The Cement Institute answers the preamble and Paragraph One as follows:

"Come now by their attorneys, the respondents, The Cement Institute, S. W. Storey, President; G. H. Reiter named as Secretary; and the Vice-Presidents, Treasurer, and Trustees of The Cement Institute, and for answer to the complaint of the Federal Trade Commission in the above-entitled matter state that they are not engaged in

* The answer of THE CEMENT INSTITUTE was filed by it, S. W. Storey, President; G. H. Reiter, named as Secretary; and the Vice-President, Treasurer and Trustees of the Institute.

interstate commerce, are not in competition in commerce with any person, partnership, or corporation, and are not engaged in the manufacture, sale, or offering for sale of cement, and that the Federal Trade Commission has no jurisdiction of the above-named respondents in respect to the matters alleged in the complaint. Reserving the right to move to dismiss the complaint in this proceeding as against these respondents for lack of jurisdiction or for any other reason, they further answer the complaint as follows:"

Paragraph One: These respondents admit that The Cement Institute is an unincorporated trade association which includes as its members producers of Portland cement, located in various sections of the United States, and that practically every producer of cement in the United States is a member of the Institute. These respondents aver that the Institute was organized in August, 1929. They admit that it has officers, trustees, committees, bureaus, and other agents. These respondents aver that the Institute has freight rate bureaus located at Bethlehem, Pennsylvania, and Chicago, Illinois.

These respondents admit that S. W. Storey is the President of the Institute, and that G. H. Reiter was the Secretary until April 15, 1937. These respondents admit that the Vice-Presidents, Treasurer and Trustees of The Cement Institute hold the said respective offices in the Institute.

"These respondents admit that all other respondents named in the complaint, except Valley Forge Cement Company, are members of the Institute. These respondents aver that many of the other respondents are producers of cement, some of whom have mills in more than one locality and, upon information and belief, the respondents submitting this answer believe that the producing respondents are described with substantial accuracy in the complaint."

H. Form of Answer Used by Certain Producers.

The following companies use a similar form of answer with variations of substance as noted in the footnotes:

Alpha
Arkansas†
Ash Grove
Bessemer
Castalia
Colorado†
Consolidated
Coplay
Cumberland
Dewey
Federal
Florida
Georgia
Giant
Glens Falls
Green Bag W. Va.
Hawkeye
Hercules
Hermitage
Idaho‡
Keystone
Kosmos
Lawrence
Lehigh
Lone Star
Medusa
Monarch
Monolith Midwest
National
Nazareth
Nebraska†
North American
Northwestern States
Oklahoma†
Peerless
Petoskey
Pittsburgh
Utah
Signal Mountain
Southern States
Southwestern
Spokane
Standard
Superior
Three Forks†
Trinity
Union†
Universal Atlas
Volunteer
Vulcanite
Wabash
West Penn
Whitehall
Wolverine

---

† ARKANSAS, COLORADO, NEBRASKA, OKLAHOMA, THREE FORKS and UNION submitted a joint answer. These companies are sometimes referred to hereinafter as "These Six Companies".

‡ IDAHO, amended answer.

Comes now, by its attorneys, the respondent, ...[1] reserving the right to move to[2] dismiss the complaint herein for lack of jurisdiction, answers the complaint of the Federal Trade Commission in the above-entitled matter as follows:

Answer to Count One of the Complaint.

Paragraph One: This respondent admits that The Cement Institute is an unincorporated trade association which includes as its members producers of Portland cement, located in various[3] sections of the United States, and that practically every producer of cement in the United States is a member[4] of the Institute. This respondent avers that the Institute was organized in August, 1929 and that it operates through its officers, trustees, committees, bureaus, and other agents. This respondent avers that the Institute has freight rate bureaus located at Bethlehem, Pennsylvania, and Chicago, Illinois.

This respondent admits that S. W. Storey is the President of the Institute, and that G. H. Reiter was the Secretary until April 15, 1937. This respondent admits that the Vice-Presidents, Treasurer and Trustees of The Cement Institute hold the said respective offices in the Institute.

Respondent ..... admits that it is a ..... corporation with its principal place of business at .....[5]

---

[1] LONE STAR inserts "named herein as, and formerly known as, International Cement Corporation, and".

[2] ALPHA omits "move to.".

[3] VOLUNTEER substitutes "all" for "various."

[4] NORTH AMERICAN substitutes as follows: "a great majority of producers of cement in the United States are members" for "practically every producer of cement in the United States is a member."

[5] Companies using this form fill in the blanks as follows:

Company	State of Incorporation	Principal Place of Business
ALPHA	New Jersey	Easton, Pa.
ARKANSAS	Arkansas	Denver, Colorado
ASH GROVE	Maine	Kansas City, Mo.
BESSEMER	Ohio	Youngstown, Ohio
CASTALIA	Pennsylvania	Pittsburgh, Pa.
COLORADO	Colorado	Denver, Colo.
CONSOLIDATED	Delaware	Chicago, Ill.
COPLAY	Pennsylvania	Coplay, Pa.
CUMBERLAND	Delaware	Cowan, Tenn.

This respondent is without knowledge as to the states of incorporation and principal places of business of other respondents.[6]

Company	State of Incorporation	Principal Place of Business
DEWEY	West Virginia	Kansas City, Mo.
FEDERAL	New York	Buffalo, N. Y.
FLORIDA	Delaware	Chicago, Ill.
GEORGIA	Georgia	Atlanta, Ga.
GIANT	Delaware	Philadelphia, Pa.
GLENS FALLS	New York	Glens Falls, N. Y.
GREEN BAG W. VA.	West Virginia	Kenova, W. Va.
HAWKEYE	West Virginia	Des Moines, Iowa
HERCULES	Pennsylvania	Philadelphia, Pa.
HERMITAGE	Delaware	Nashville, Tenn.
IDAHO	Idaho	Inkom, Idaho
KEYSTONE	Pennsylvania	Philadelphia, Pa.
KOSMOS	Kentucky	Kosmosdale, Ky.
LAWRENCE	Pennsylvania	Northampton, Pa.
LEHIGH	Pennsylvania	Allentown, Pa.
LONE STAR	Maine	New York, N. Y.
MEDUSA.	Ohio	Cleveland
MISSOURI	Missouri	St. Louis, Mo.
MONARCH	Kansas	Humboldt, Kansas
MONOLITH MIDWEST	Nevada	Los Angeles, Cal.
NATIONAL	Alabama	Birmingham, Ala.
NAZARETH	Pennsylvania	Nazareth, Pa.
NEBRASKA	Nebraska	Denver, Colo.
NORTH AMERICAN	Delaware	Albany, N. Y.
NORTHWESTERN STATES	Iowa	Mason City, Iowa
OKLAHOMA	Oklahoma	Denver, Colo.
PEERLESS	Michigan	Detroit, Mich.
PETOSKEY	Delaware	Petoskey, Mich.
PITTSBURGH	Pennsylvania	Pittsburgh, Pa.
UTAH	Wyoming	Salt Lake City, Utah
SIGNAL MOUNTAIN	Delaware	Chicago, Ill.
SOUTHERN STATES	Georgia	Rockmart, Ga.
SOUTHWESTERN	West Virginia	El Paso, Texas
SPOKANE	Washington	Spokane, Wash.
STANDARD	Ohio	Painesville, Ohio
SUPERIOR	Ohio	Portsmouth, Ohio
THREE FORKS.	Montana	Denver, Colo.
TRINITY	West Virginia	Chicago, Ill.
UNION	Utah	Denver, Colo.
UNIVERSAL ATLAS	Indiana	Chicago, Ill.
VOLUNTEER	Delaware	Knoxville, Tenn.
VULCANITE	New Jersey	Philadelphia, Pa.
WABASH	Indiana	Detroit, Mich.
WEST PENN.	Pennsylvania	Butler, Pa.
WHITEHALL	Pennsylvania	Philadelphia, Pa.
WOLVERINE	Michigan	Coldwater, Mich.

SOUTHWESTERN inserts "This respondent avers that it operates plants at El Paso, Texas, Victorville, California and Osborn, Ohio."

[6] LEHIGH inserts "but admits that some of them are members of the Institute."

This respondent admits that it is a producer of cement and a member of the Institute.[7]

Except as hereinabove[8] set forth, this respondent denies each and every allegation of Paragraph One.[9]

III. Second Form Used by Certain Producers.

GREAT LAKES and VALLEY FORGE employ the following general outline for the entire answer, with variations of substance noted below.

"Comes now, by its attorneys, the respondent ..... and, reserving the right to move to dismiss the complaint herein for lack of jurisdiction,[1] for answer to the complaint of the Federal Trade Commission in the above entitled matter avers as follows:

First: It admits that it is an .....[2] cor-

[7] ARKANSAS, COLORADO, NEBRASKA, OKLAHOMA, THREE FORKS and UNION, submitting a joint answer, insert "and that on information and belief some of the other respondents are producers of cement and members of the Cement Institute."

ALPHA inserts "It admits that some of the other respondents are producers of cement and that some of them are members of the Institute."

CASTALIA substitutes "but avers that it has not produced cement for the five years last past. It admits that it and some of the other respondents are producers of cement and that it and some of the other respondents are members of the Institute." for "and a member of the Institute."

NAZARETH inserts "and that some of the other respondents are producers of cement."

NORTH AMERICAN for this paragraph substitutes: "This respondent admits that it produces Portland cement under its trade-mark brand and also produces another class of cement which is also under a trade-mark brand and is covered by letters patent of the United States. This respondent also admits that it is a member of the Institute, and that it has mills in more than one locality."

STANDARD substitutes ": that it is a member of the Institute; and that it has one mill situate in Painesville Township, Lake County, Ohio." for "and a member of the Institute."

VOLUNTEER adds "and that many of the corporate respondents in this matter have mills in more than one locality, but this respondent has only one mill and it is located at Knoxville, Tennessee."

[8] VOLUNTEER substitutes "otherwise" for "hereinabove."

[9] NORTH AMERICAN for the preceding paragraph substitutes: "Except as hereinabove set forth this respondent is without knowledge of the facts alleged in Paragraph One as to other respondents."

[1] VALLEY FORGE omits "reserving the right to move to dismiss the complaint herein for lack of jurisdiction."

[2] GREAT LAKES—"Indiana."
VALLEY FORGE—"Pennsylvania."

poration having its principal place of business at .....[3]

[Second: It denies that it is, or ever has been, a member of the respondent Institute.][4]

Second:[5] it avers that it is solely engaged in the production of cement[6] [and that its entire production has at all times been sold to Lehigh Portland Cement Company pursuant to an agreement by and between this respondent and said Lehigh Portland Cement Company, and that under the terms of said agreement all cement produced by this respondent is marketed by said Lehigh Portland Cement Company under its name.] This respondent does not now sell and never has sold any of its production of cement to any other person, firm or corporation, and does not now and never has sold any of its production of cement in interstate commerce.

Third:[8] Except as hereinabove set forth, this respondent denies each and every allegation of the complaint.

Wherefore, this respondent respectfully prays that the complaint of the Federal Trade Commission in this proceeding, both as to Count I and as to Count II thereof, be dismissed."

IV. Non-Uniform Answers.

A. AETNA answers Paragraph One of Count I as follows:

Now comes Aetna Portland Cement Company, a Maine corporation, one of the respondents herein, and, reserving the right to move to dismiss the Complaint filed herein for lack of jurisdiction, for answer to said Complaint says:

Count I.

Charge Under Federal Trade Commission Act. Description of the Respondents.

Paragraph One. This respondent admits that the respondent, The Cement Institute, is an unincorporated trade

[3] GREAT LAKES—"Buffalo, New York."
VALLEY FORGE—"Catasauqua, Pa."

[4] Omitted by GREAT LAKES.

[5] VALLEY FORGE substitutes "Third" for "Second".

[6] VALLEY FORGE omits the following bracketed portion.

[8] VALLEY FORGE substitutes "Fourth" for "Third".

association which includes as its members producers of Portland Cement located in all sections of the United States, and that the membership of the Institute comprises practically every producer of cement in the United States; that it was organized in August 1929, operates through its officers, trustees, committees, bureaus and other agents; and that it has freight rate bureaus located at Bethlehem, Pennsylvania and Chicago, Illinois; that the respondent S. W. Storey is the President of the Institute, and that G. H. Reiter was the Secretary until April 15, 1937, and that its Vice-President, Treasurer and Trustees hold the said respective offices in the said Institute.

This respondent admits that it is a corporation organized under the laws of the State of Maine and having its principal place of business at Bay City, Michigan, and that it is a producer of cement and a member of the Institute.

This respondent is without knowledge of the states of incorporation, principal places of business, products, plant localities and Institute membership of the remaining respondents named in Paragraph One of the Complaint.

B. BEAVER answers Paragraph One of Count I as follows:

Comes now the respondent Beaver Portland Cement Company, by its attorney, and makes the following answer to the Complaint of the Federal Trade Commission in the above entitled matter:

Answer to Count I of the Complaint.

Paragraph One: This respondent, Beaver Portland Cement Company, admits that it is an Oregon corporation having its principal place of business at Portland, Oregon. Respondent admits that The Cement Institute is an unincorporated association which includes among its members most of the producers of Portland Cement in the United States; that it is a trade association formed for the promotion of the mutual interests of its members; that it operates through its officers, trustees and agents. This respondent is without knowledge of the other facts or matters pleaded in said Paragraph One, and therefore denies each and every allegation of said Paragraph One, except the allegations thereof hereinbefore specifically admitted.

C. CALAVERAS answers Paragraph One of Count I as follows:

Comes now respondent, Calaveras Cement Company, a corporation, by its attorneys, and for itself only, and expressly reserving the right to move to dismiss the complaint of the Federal Trade Commission in the above entitled matter, answers said complaint as follows:

Answer to Count I of the Complaint.

Paragraph One: For answer to the allegations contained in Paragraph One of Count I of said complaint, this respondent admits that it is a Delaware corporation, with its principal place of business at San Francisco, California, and also admits the substantial accuracy of all other allegations of said Paragraph One.

D. CALIFORNIA answers Paragraph One of Count I as follows:

Comes now the respondent California Portland Cement Company, by its attorneys, and answering the complaint of the Federal Trade Commission in the above entitled matter, states that this answering respondent is not, and has not been, engaged in interstate commerce in the manufacture, sale, or offering for sale or shipments of cement to any appreciable extent; that it has only one mill, which is located at Colton, California; that the whole of its business for about four years has been and is intrastate business, confined to the State of California, with the exception of a small amount of cement sold within and or shipped by it to points in Arizona, constituting less than 3% of its business; that the Federal Trade Commission has no jurisdiction of this respondent respecting or in relation to the matters alleged in the complaint.

Reserving the right to move to dismiss the complaint in this proceeding as against this respondent, it further answers the complaint as follows:

Answer to Count I.

Paragraph One: This respondent admits that it is a California corporation having its principal place of business at Los Angeles, California. Respondent is without knowledge as to the states of incorporation and principal places of business of other respondents except as to the

three respondents doing business in Southern California, to wit: Riverside Cement Company, Southwestern Portland Cement Company, and Monolith Portland Cement Company, which corporations are correctly described in the complaint with respect to the states under the laws of which they are respectively incorporated and with respect to their respective principal places of business. Respondent admits that it is a member of the Cement Institute, hereinafter referred to as the "Institute." It has only one mill, which is located at Colton, California. Upon information and belief, this respondent admits that all of the other respondents named in the complaint are producers of cement, are members of the Institute, and many of them have mills in more than one locality, and that the Cement Institute is an unincorporated trade association which includes as its members producers of portland cement located in various sections of the United States, and was organized in August, 1929, and that it operates through its officers, trustees, bureaus, committees, and other agents; that S. W. Storey is president of the Institute, and that G. H. Reiter was the secretary thereof until April 15, 1937, and that the vice president, treasurer, and trustees of the Institute hold the said respective offices in the Institute. Except as hereinabove admitted or alleged, this respondent denies each and every allegation of Paragraph One of Count I of the complaint for lack of knowledge.

E. DIAMOND answers Paragraph One of Count I as follows:

The respondent, The Diamond Portland Cement Company, of Middle Branch, Ohio, now comes, and reserving the right to move to dismiss the complaint herein for lack of jurisdiction of the Commission, for its Answer to the Complaint herein says:

Count I.

Paragraph One: For convenience the paragraph numbering of the complaint will be preserved in this answer and the several paragraphs of the complaint answered under like Paragraph Number.

It admits that the respondent, the Cement Institute, is an unincorporated association, having as its members, producers of Portland Cement at various places in the United States, and that the officers of the Institute are as averred

in the complaint except that George H. Reiter was secretary until April 15, 1937 only.

It admits that said Institute was organized in 1929 and that it operates through its officers, trustees, committees, bureaus and agents, and that its membership is divided into various divisions.

It admits that this respondent is a producer of cement, a member of the Institute and says that it is an Ohio Corporation, having its principal place of business at Middle Branch, Ohio. It says that it is not advised as to the corporate status and principal place of business of the other respondents referred to as "Producing Respondents" and, therefore, denies the allegations of the Complaint with respect thereto and asks strict proof thereof be required.

Respondent denies all the allegations of Paragraph One not herein specifically admitted.

F. EDISON answers Paragraph One of Count I as follows:

Comes, now, by its attorney, the respondent Edison Cement Corporation, and reserves the right to move to dismiss the complaint herein, and each count thereof, on the ground of insufficiency in law upon the face thereof in that it fails to set forth facts constituting a cause of action or legal basis for relief within the jurisdiction of the Federal Trade Commission, and for its answer to said complaint:

Answer to Count I of the Complaint.

Paragraph One: Admits that The Cement Institute is an unincorporated trade association which includes as its members producers of Portland cement, located in various sections of the United States, and that practically every producer of cement in the United States is a member of the Institute; that the Institute was organized in August, 1929 and that it operates through its officers, trustees, committees, bureaus, and other agents; and that the Institute has freight rate bureaus located at Bethlehem, Pennsylvania, and Chicago, Illinois.

Admits that S. W. Storey is the President of the Institute, and that G. H. Reiter was the Secretary until April 15, 1937; and that the Vice-Presidents, Treasurer and Trustees of The Cement Institute hold the said respective offices in the Institute.

Admits that this respondent is a New Jersey corporation with a place of business at New York, N. Y., but avers that its principal place of business is at West Orange, N. J., but this respondent is without knowledge as to the states of incorporation and principal places of business of other respondents.

Admits that it is a producer of cement and a member of the Institute.

Except as hereinabove set forth, this respondent denies each and every allegation of Paragraph One.

G. GREEN BAG PA. answers Paragraph One of Count I as follows:

Comes now, by its attorney, the respondent Green Bag Cement Company of Pennsylvania and, reserving the right to move to dismiss the complaint herein for lack of jurisdiction, answers the complaint of the Federal Trade Commission in the above-entitled matter as follows:

Answer to Count I of the Complaint.

Paragraph One: Respondent Green Bag Cement Company of Pennsylvania admits that it is a Pennsylvania corporation. It states that its principal place of business is at Grant Building, Pittsburgh, Pennsylvania, and that it is a sales company owned by Pittsburgh Coke & Iron Company, a producer of cement.

This respondent admits that The Cement Institute is an unincorporated trade association which includes as its members producers of Portland cement, located in various sections of the United States, and, on information and belief, that most producers of cement in the United States are members of the Institute. This respondent has no knowledge of the exact date of organization of the Institute, but admits, on information and belief: that said Institute was organized in 1929; that said Institute operates to varying extents, respectively, through its officers, trustees, committees, bureaus, and other agents; that said Institute has freight rate bureaus located at Bethlehem, Pennsylvania, and Chicago, Illinois; that S. W. Storey is the President of the Institute; that G. H. Reiter was the Secretary until April, 1937; and that the Vice-Presidents, Treasurer and Trustees of the Cement Institute hold the said respective offices in the Institute. Respondent is a member of said Institute.

This respondent is without knowledge as to the states of incorporation and principal places of business of other respondents.

Except as hereinabove set forth, this respondent denies each and every allegation of Paragraph One.

H. HURON answers Paragraph One of Count I as follows:

Huron Portland Cement Company, one of the respondents in the above entitled cause, by its attorney, makes answer to the complaint filed before the Federal Trade Commission in Docket 3167, entitled "In the Matter of the Cement Institute, et al.", and, reserving the right to move to dismiss the said Complaint for lack of jurisdiction or for any other reason, says:

Paragraph One: On information and belief, it admits the matters set forth in Paragraph One of Count I of said complaint. It specifically admits that its principal place of business is at Detroit, Michigan, but it shows that its plant for the manufacture of cement is located at Alpena, Michigan, and that it likewise has plants, each with large storage facilities and with facilities for the handling, sacking and delivery of cement located at the following points: Duluth, Minnesota; Milwaukee, Wisconsin; Muskegon, Michigan; Saginaw, Michigan; Detroit, Michigan; Toledo, Ohio; Cleveland, Ohio; Buffalo, New York; and Oswego, New York; that a substantial portion of cement manufactured at Alpena, Michigan is transported in bulk-conveying steamships constructed particularly for such transportation service to these various plants last named; that at these plants the said bulk cement is stored and there remains until it is sold. Thereafter as such cement is sold it is placed in sacks and prepared for sale and delivery to buyers.

I. IDAHO* answers Paragraph One of Count I as follows:

In accordance with Rule VII of the Rules of Practice of the Federal Trade Commission, the respondent, Idaho Portland Cement Company herein files its answer to the complaint of the Federal Trade Commission, identified as Docket number 3167.

* Original answer.

I.

Answering Paragraph One of Count I of the complaint, the respondent Idaho Portland Cement Company admits the existence of the Cement Institute and the membership of the Idaho Portland Cement Company therein.

J. MISSOURI enters a plea to the jurisdiction and answers Paragraph One of Count I as follows:

Plea of Lack of Jurisdiction Under Count I of the Complaint.

Comes now, by its attorneys, the respondent, Missouri Portland Cement Company, and as a defense to Count I of the Complaint, the Count charging a violation of the Federal Trade Commission Act, this respondent pleads that, under the facts alleged in said Count, the Commission is without jurisdiction to enter any cease and desist order against this respondent.

Under Section 5 of said Act "unfair methods of competition in commerce" are declared unlawful, and the Commission is empowered to issue a cease and desist order against any corporation which has been or is using any unfair method of competition in commerce. This gives the Commission power under said Act to issue such cease and desist order only in cases where unfair methods of competition have been or are being used against competitors of the person, partnership or corporation so charged. No other provision of the Act enlarges the Commission's jurisdiction to issue any cease and desist order.

Where respondents are charged as in Count I, not with using unfair methods of competition against competitors, but with combining with competitors and destroying competition between them, the Commission is without jurisdiction in the premises and therefore the charge should be dismissed.

Answer to Count I of the Complaint.

This respondent answers the complaint of the Federal Trade Commission in the above-entitled matter as follows:

Paragraph One: This respondent admits that The Cement Institute is an unincorporated trade association which includes as its members producers of Portland ce-

ment, located in various sections of the United States, and that practically every producer of cement in the United States is a member of the Institute. This respondent avers that the Institute was organized in August, 1929 and that it operates through its officers, trustees, committees, bureaus, and other agents. This respondent avers that the Institute has freight rate bureaus located at Bethlehem, Pennsylvania, and Chicago, Illinois.

This respondent admits that S. W. Storey is the President of the Institute, and that G. H. Reiter was the Secretary until April 15, 1937. This respondent admits that the Vice-Presidents, Treasurer and Trustees of The Cement Institute hold the said respective offices in the Institute.

This respondent admits that it is a Missouri corporation with its principal place of business at St. Louis, Missouri.

This respondent is without knowledge as to the states of incorporation and principal places of business of other respondents.

This respondent admits that it is a producer of cement and a member of the Institute.

Except as hereinabove set forth, this respondent denies each and every allegation of Paragraph One.

K. MONOLITH answers Paragraph One of Count I as follows:

Comes now respondent Monolith Portland Cement Company, a corporation, by its attorney, and, reserving the right to move to dismiss the Complaint herein for lack of jurisdiction, answers the Complaint of the Federal Trade Commission in the above entitled matter as follows:

Answer to Count I.

Paragraph One: This respondent admits that it is a Nevada corporation having its principal place of business at Los Angeles, California. This respondent is without knowledge as to the states of incorporation and principal places of business of other respondents. This respondent admits that it is a producer of cement and a member of the Institute. It admits also the substantial accuracy of all other allegations in Paragraph One.

L. NORTHWESTERN answers Paragraph One of Count I as follows:

Comes now the Northwestern Portland Cement Co., a corporation, one of the respondents in the above entitled

matter, by its attorneys, Weter, Roberts & Shefelman, and answering the Complaint of the Federal Trade Commission herein states that it is not engaged in interstate commerce in any manner whatsoever, and in particular is not engaged in interstate manufacture or sale or offering for sale of cement, and the Federal Trade Commission therefore has no jurisdiction of this respondent in the matter alleged in the Complaint, and these proceedings should therefore be dismissed as against this respondent. Reserving the right to move to dismiss the Complaint in this proceeding as against it, respondent makes further answer to the Complaint as follows:

Answer to Count I of the Complaint.

(Charge Under Federal Trade Commission Act.)

Description of the Respondent.

Paragraph One: This respondent admits that it is a Washington corporation, having its principal place of business in King County, Washington, and that it is a member of The Cement Institute, an unincorporated association which includes as its members other producers of Portland Cement. This respondent is without knowledge as to the other allegations contained in said Paragraph.

M. OREGON answers Paragraph One of Count I as follows:

Comes now, by its attorneys, the respondent Oregon Portland Cement Company, and for answer to the complaint of the Federal Trade Commission in the above-entitled matter states that it is not engaged in interstate commerce in the manufacture, sale, or offering for sale of cement; and that the Federal Trade Commission has no jurisdiction of this respondent in the matters alleged in the complaint. Reserving the right to move to dismiss the complaint in this proceeding as against this respondent, it further answers the complaint as follows:

Answer to Count I of the Complaint.

Paragraph One: Answering Paragraph One, this respondent admits that it is a Nevada corporation, having its principal place of business at Portland, Oregon.

This respondent is without knowledge as to the states of

incorporation and principal places of business of other respondents.

This respondent admits that it is a member of the Institute.

N. PACIFIC answers Paragraph One of Count I as follows:

Respondent Pacific Portland Cement Company, a corporation, answering the complaint of the Federal Trade Commission for itself alone and not for any of the other respondents named therein, and expressly reserving the right to move to dismiss the complaint herein, admits, alleges, and denies as follows:[1]

O. PENN-DIXIE answers Paragraph One of Count I as follows:

Comes now, by its attorneys, the respondent Pennsylvania-Dixie Cement Corporation, reserving the right to move to dismiss the complaint herein for lack of jurisdiction, and answers the complaint of the Federal Trade Commission in the above-entitled matter as follows:

Answer to Count I of the Complaint.

I. This respondent denies each and every allegation contained in Paragraph One thereof, except that The Cement Institute is an unincorporated association which, it avers, was organized in August, 1929, and exists and operates solely for the objects and purposes and in the manner provided in and by its Articles of Association, to a true and complete copy of which reference is hereby prayed; and except that certain of the corporate respondents are producers of cement, some having mills in more than one locality; that certain of the corporate respondents are members of The Cement Institute; that the said Institute has freight rate bureaus located at Bethlehem, Pennsylvania and Chicago, Illinois; that the respondent Storey is the President and the respondent Reiter was, until April 15, 1937, the Secretary of the said Institute; that this respondent Pennsylvania-Dixie Cement Corporation is a Delaware corporation having its principal place of business at New York, N. Y.; and except that it is without knowledge as to the truth of the allegations respecting the states of incorporation or principal places of business of

[1] PACIFIC does not otherwise answer Paragraph One of the complaint.

the corporate respondents other than itself, or respecting certain unnamed individual respondents, except that certain individuals hold the offices of Vice-President, Treasurer and Trustee, respectively, in the said Institute.

P. RIVERSIDE answers Paragraph One of Count I as follows:

Respondent, Riverside Cement Company, a corporation, answering the complaint of the Federal Trade Commission for itself alone and not for any of the other respondents named herein, and reserving the right to move to dismiss this proceeding as against this respondent, alleges and respectfully shows:

Answer to Count I.

Paragraph One: Answering Paragraph One of said Count, it admits that it is a Delaware corporation, having its principal place of business at Los Angeles, California. It admits each and all of the allegations in said Paragraph One contained with respect to respondent, The Cement Institute, and its officers. It is without knowledge as to certain of the facts alleged in said Paragraph One concerning the various producing respondents other than this respondent, but it has no reason to doubt the accuracy of the allegations of said paragraph in that behalf, and therefore admits all of the allegations in said paragraph contained concerning said producing companies other than this respondent, subject to correction as to any particulars, if any, in which such allegations may later prove to be incorrect or inaccurate.

Q. SANTA CRUZ answers Paragraph One of Count I as follows:

Comes now respondent, Santa Cruz Portland Cement Company, a corporation, by its attorneys, for itself, and not for nor on behalf of nor in conjunction with any other respondent or respondents, and (expressly reserving the right to move to dismiss the complaint herein, and each count thereof, for lack of jurisdiction in the said Commission) answers the said complaint as follows:

Answers to Count I.

I.

Answering the allegations contained in Paragraph One of the first count of the complaint, this respondent admits that it is a California corporation having its principal place of business in the City and County of San Francisco, California. It denies that the respondent Institute operates through its officers, committees, bureaus, and other agents, or through its officers, committees, bureaus, or other agents, or any of them. It admits the substantial accuracy of all other allegations in said paragraph.

R. SUPERIOR, INC. answers Paragraph One of Count I as follows:

Comes now Superior Portland Cement, Inc., one of the respondents above named, through its attorneys, and for answer to the complaint of the Federal Trade Commission in the above-entitled matter states that it is not engaged in interstate commerce in the manufacture, sale, or offering for sale of cement, and that the Federal Trade Commission has no jurisdiction over this respondent in the matters alleged in the complaint. Reserving the right to move to dismiss the complaint in this proceeding as against it, this respondent further answers the complaint as follows:

Answer to Count I of the Complaint.

Description of Respondent.

Paragraph One: Answering Paragraph One of Count I this respondent admits that it is a Washington corporation, having its principal place of business at Seattle, Washington, admits that it is a member of The Cement Institute, an unincorporated association, but alleges that it is without knowledge as to the other allegations therein contained, and therefore denies the same.

S. YOSEMITE answers Paragraph One of Count I as follows:

Comes now respondent Yosemite Portland Cement Corporation, a corporation, by its attorneys, for itself, and not for nor on behalf of nor in conjunction with any other respondent or respondents, and (expressly reserving the right to move to dismiss the complaint herein, and each count thereof, for lack of jurisdiction in the said Commission) answers the said complaint as follows:

Answer to Count I.

I.

Answering the allegations contained in Paragraph One of the first count of the complaint, this respondent admits that it is a Delaware corporation, having its principal place of business at Merced, California. It admits also the substantial accuracy of all other allegations in said paragraph.

PARAGRAPH TWO OF COUNT ONE.
COMPLAINT.

Interstate Character of Producing.

Respondents' Commerce.

Paragraph Two: Producing respondents in the regular course of their business in the sale and distribution of cement cause the same to be shipped and transported from the various points of its production in certain respective states through and into other states of the United States. They are in competition among themselves except insofar as such competition has been hindered, lessened, restricted or restrained, as alleged in Paragraphs Four to Seven, inclusive, hereof. The Institute is not engaged in commerce but is engaged in aiding producing respondents in carrying out said unlawful methods as alleged herein, which directly and substantially affect competition among its members.

ANSWERS.

I. Answer of The Cement Institute.

THE CEMENT INSTITUTE answered as follows:

Paragraph Two: On information and belief, these respondents state that most of the producing respondents are engaged in interstate commerce and that some of them are in competition with each other. These respondents admit that the Institute is not engaged in commerce, and they deny that the Institute is engaged in aiding the producing respondents in carrying out any unlawful methods or any methods which directly and substantially affect competition among the members of the Institute.

Except as hereinabove set forth, these respondents deny each and every allegation of Paragraph Two.

II. Form of Answer Used by Certain Producers.

The following companies use a similar form of answers with variations of substance as noted in the footnotes:

Aetna
Alpha
Arkansas
Ash Grove
Bessemer
Castalia
Colorado
Consolidated
Coplay
Cumberland
Dewey
Edison
Federal
Florida
Georgia
Giant
Glens Falls
Green Bag Pa.
Green Bag W. Va.
Hawkeye
Hercules
Hermitage
Idaho*
Keystone
Kosmos
Lawrence
Lehigh
Lone Star
Medusa
Missouri
Monarch
Monolith Midwest
National
Nazareth
Nebraska
North American
Northwestern States
Oklahoma
Peerless
Petoskey
Pittsburgh
Utah
Signal Mountain
Southern States
Southwestern
Spokane
Standard
Superior
Three Forks
Trinity
Union
Universal Atlas
Volunteer
Vulcanite
Wabash
West Penn
Whitehall
Wolverine

Paragraph Two: This respondent admits that in the regular course of its business in the sale and distribution

* IDAHO amended answer.

of cement it causes some cement to be[1] shipped and transported in interstate commerce.[2] It admits that it is in competition[3] with other producing respondents, but it denies that such competition has to any extent or in any degree[4] been hindered, lessened, restricted, or restrained,[5] as alleged in the complaint or otherwise.[6] This respondent admits that The Cement Institute is not engaged in commerce, but it denies that the Institute is engaged in aiding it, or to its knowledge[7] any other producing respondent or respondents,[8] in carrying out any unlawful methods.[9] Except as hereinabove set forth, this respondent is without

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[1] BESSEMER substitutes "a portion of the cement produced by it is" for "in the sale and distribution of cement it causes some cement to be".

[2] The listed companies substitute the following statements for "in interstate commerce":

(a) AETNA substitutes "from the various points of its production in the State of Michigan into other states of the United States."

(b) ALPHA substitutes "from the various points of its production in certain respective States through and into other States of the United States."

(c) BESSEMER substitutes "into other states from the point of its manufacture."

(d) FLORIDA substitutes "between the United States and certain territories and insular possessions of the United States."

(e) SOUTHWESTERN substitutes "from its plants at El Paso, Texas, and Osborn, Ohio, through and into other States of the United States, but that almost the entire output of its plant at Victorville, California, is marketed within the State of California, and that less than two per cent of the cement produced at its Victorville plant is transported through or into other States."

(f) STANDARD substitutes "from its said mill situate in the State of Ohio through and into other States of the United States."

(g) VOLUNTEER substitutes "from the point of its production at Knoxville, Tennessee, through and into other States of the United States."

[3] ARKANSAS, COLORADO, NEBRASKA, OKLAHOMA, THREE FORKS, and UNION in their joint answer insert "among themselves and".

[4] AETNA and VOLUNTEER omit "to any extent or in any degree".

[5] AETNA inserts "in any manner whatsoever, and particularly".

[6] AETNA substitutes "in Paragraphs Four to Seven, inclusive, of the Complaint." for "in the complaint or otherwise."

[7] ALPHA and VOLUNTEER omit "to its knowledge".

[8] VOLUNTEER inserts "so far as it is advised.".

[9] AETNA substitutes "this respondent in carrying out any unlawful methods, and particularly the unlawful methods alleged in the Complaint" for "it, or to its knowledge any other producing respondent or respondents in carrying out any unlawful methods".

STANDARD substitutes "this respondent, separately or in conjunction with any other respondent, in carrying out the methods alleged in the complaint to be unlawful or in carrying out any other unlawful methods whatsoever" for "it, or to its knowledge any other producing respondent or respondents in carrying out any unlawful methods".

knowledge of the facts alleged in Paragraph Two as to other respondents.[10]

Except as hereinabove set forth this respondent denies each and every allegation of Paragraph Two.[28]

III. Non-Uniform Answers.

A. BEAVER answers Paragraph Two of Count I as follows:

Paragraph Two: This respondent admits that in the regular course of its business in the sale and distribution of cement, it causes a small percentage of its total output to be shipped and transported from the point of its production at Gold Hill, Oregon, through and into other states of the United States; it admits that it is in competition with other producers of cement engaged in the ale and distribution of cement in the territory in which this respondent sells its products. This respondent denies that such competition has been hindered, lessened, restricted or restrained as alleged in Paragraphs Four to Seven of the complaint, or any thereof, or otherwise, or at all. This respondent admits that the Institute is not engaged in commerce, and denies that the Institute has aided this respondent in the manner set forth in the complaint, or otherwise, or at all, in carrying out the unlawful methods alleged in the complaint, or any unlawful methods which directly or substantially, or otherwise, or at all, affect competition between this respondent and any other producers of cement. This respondent is without knowledge of the other facts or matters pleaded in said Paragraph Two and therefore denies each and every allegation of said Paragraph Two, except the allegations thereof hereinbefore specifically admitted.

B. CALAVERAS answers Paragraph Two of Count I as follows:

Paragraph Two: For answer to the allegations contained in Paragraph Two of Count I of said complaint,

[10] ALPHA and STANDARD omit "Except as hereinabove set forth."
AETNA and VOLUNTEER omit "Except as hereinabove set forth, this respondent is without knowledge of the facts alleged in Paragraph Two as to other respondents".
GREEN BAG PA. omits "as to other respondents".

[28] AETNA and GREEN BAG PA. omit "Except as hereinabove set forth this respondent denies each and every allegation of Paragraph Two."

this respondent denies that in the regular or any course of its business in the sale and distribution, or in the sale or distribution, of cement, it causes or caused the same to be shipped and transported, or shipped or transported, from various points, or any point or points, of its production in certain respective states, or from its or any point or points of production in certain or any states or state, or at all, into other states, or from or to or through or into any state or states whatsoever or at all, except that this respondent in the regular course of its business in the sale and distribution of cement causes, from time to time, and upon the receipt of orders therefor, small quantities of cement to be shipped from its only point of production at Kentucky House, Calaveras County, California, to Southern Oregon and also to Western Nevada. This respondent denies that it is or was at any time or times whatsoever or at all in competition with any other respondent or respondents, except such respondent or respondents as had or have cement mills in California, and except such respondent or respondents as may also ship and transport cement into said portions of Oregon and Nevada; denies that such alleged or any competition between this respondent and any other respondents or respondent, or between this respondent and any other person, firm or corporation, is or at any time has been hindered, lessened, restricted or restrained, or hindered or lessened or restricted or restrained, as alleged in Paragraphs Four to Seven, inclusive, of said complaint, or in any manner or to any degree whatsoever or at all.

This respondent admits that the Institute is not engaged in commerce, but denies that the Institute is aiding this respondent in carrying out said unlawful methods, as alleged in said complaint, or any unlawful method or methods whatsoever, which directly and substantially, or directly or substantially, or at all, affect competition among the members of the Institute or any of them, or any unlawful method or methods whatsoever or at all.

For further answer to the allegations contained in said Paragraph Two of Count I of said complaint, this respondent states that it is without knowledge as to any of said allegations which it has not herein specifically admitted or denied.

C. CALIFORNIA answers Paragraph Two of Count I as follows:

Paragraph Two: This respondent denies that in the regular course of its business, in the sale and distribution of cement, it has, for approximately four years, caused, or that it now causes the same to be shipped and transported to, through or into other states of the United States, from its place of production at Colton, California, except with respect to less than 3% of the cement produced and shipped by it to points in Arizona as aforesaid. Admits that it is in competition with the other respondents which sell and distribute cement in the geographical areas in which respondent sells and distributes its cement. Denies that such competition has been hindered, lessened or restrained or restricted either as alleged in Paragraphs Four to Seven, inclusive, of Count I of the complaint, or any part thereof, or at all. Admits that the Institute is not engaged in commerce. It denies that the Institute has engaged, or is engaged, in aiding it, or, to its knowledge, any other respondent, in carrying out such, or any other, unlawful methods, either as alleged in Count I or otherwise, or which, directly or substantially, or otherwise, affect or affects competition amongst all or any of the members of the Institute, or otherwise, or at all. Respondent is without knowledge of the other matters alleged in Paragraph Two of the complaint, and therefore denies each and every of same.

D. DIAMOND answers Paragraph Two of Count I as follows:

"Interstate Character of Producing Respondent's Commerce."

Paragraph Two: This respondent admits that some cement producers in the regular course of their business cause some portion of their products to be transported into and through States other than that where manufactured, and says further, that so far as the product of this Respondent Company is concerned, over a period of years last past, an average of less than ten percent (10%) of its product has been by it shipped outside the State of Ohio, or in Interstate Commerce.

Respondent is not familiar with or advised as to competitive conditions throughout the country, but it admits

that the Cement Producers in that part of the country where the product of this respondent is sold, are in competition among themselves, and it avers that such competition is not now, nor has it been hindered, lessened, restricted or restrained by any unlawful method or practices, particularly so far as this respondent is concerned.

It admits that the Cement Institute is not engaged in commerce and it denies that said Institute is, or has been, engaged in aiding this respondent or to its knowledge any other producing respondents in carrying out any unlawful methods or practices in their business which directly and substantially affect competition among the members of said Institute.

Respondent denies each allegation in Paragraph Two of the complaint not herein specifically admitted.

E. HURON answers Paragraph Two of Count I as follows:

Paragraph Two: It admits the matters set forth in the first sentence of Paragraph Two of said complaint. It admits the respondents are in competition among themselves but it denies that such competition has been hindered, lessened, restricted or restrained as alleged in the said complaint. It admits that the Institute is not engaged in commerce but denies that it is engaged in aiding this respondent (or, to its knowledge, any other respondent) in carrying out any unlawful methods affecting competition.

F. IDAHO* answers Paragraph Two of Count I as follows:

II.

Answering Paragraph Two of Count I of the complaint, the respondent Idaho Portland Cement Company denies that it has accepted any advice or suggestions from the Cement Institute as to the conduct of its business, except during the period when the National Recovery Act was in force.

G. MONOLITH answers Paragraph Two of Count I as follows:

Paragraph Two: This respondent denies that in the regular or other course of the business of this respondent in the sale and distribution of cement or in the sale or

* Original answer.

distribution of cement it now causes or at any time has caused cement to be shipped and transported or to be shipped or transported from the points of its production through and into or through or into other states of the United States. This respondent admits that it is in competition with other producing respondents in the geographical areas in which it sells and distributes cement; it denies that such alleged or any competition whatsoever engaged in by this respondent has been or is hindered, lessened, restricted or restrained as alleged in Paragraphs Four to Seven, inclusive, of the Complaint, or in any manner or to any degree whatsoever, or at all; it admits that the Institute is not engaged in commerce but denies that it is engaged in aiding this respondent in carrying out said alleged unlawful methods, or any unlawful method or methods whatsoever, which directly and substantially or directly or substantially or otherwise, or at all, affect competition among its members or any of them.

Further answering the allegations contained in Paragraph Two of the Complaint, this respondent alleges that it, either alone or with any other respondent or respondents, is not and has not been carrying out or engaging in any unlawful method or methods which directly or substantially or otherwise or at all affect competition in the sale or distribution of cement in interstate commerce, and that it has not been nor is it carrying out or engaging in any unlawful method or methods whatsoever, or at all.

This respondent is without knowledge concerning the allegations in said Paragraph Two which it has not herein specifically admitted or specifically denied and therefore it denies such allegations and each of them.

H. NORTHWESTERN answers Paragraph Two of Count I as follows:

Interstate Character of Producing Respondent's Commerce.

Paragraph Two: This respondent denies that, in the regular course of its business, or at all, in the sale and distribution of cement, it causes the same to be shipped and transported in, to, or through any states of the United States except the State of Washington, and denies that it in any manner is engaged or makes any shipment in interstate commerce, and denies that it in any manner competes

outside the geographical limits of said state; and further denies that its competition has been hindered, lessened, restricted, or restrained as alleged in Paragraphs Four to Seven, inclusive, of the Complaint herein, or in any other manner.

I. OREGON answers Paragraph Two of Count I as follows:

Paragraph Two: Answering Paragraph Two, this respondent denies that in the regular course of its business in the sale and distribution of cement it causes the same to be shipped and transported in interstate commerce. It admits that it is in competition with other producing respondents in the geographical areas in which it sells and distributes cement, and denies that such competition has been hindered, lessened, restricted, or restrained in any manner, and particularly as alleged in Paragraphs Four to Seven of the complaint herein. This respondent admits that the Institute is not engaged in commerce. This respondent is without knowledge of the facts alleged in Paragraph Two as to other respondents.

Except as hereinabove set forth this respondent denies each and every allegation of Paragraph Two.

J. PACIFIC answers Paragraph Two of Count I as follows:

I.

Answering the allegations contained in paragraph II, this respondent denies that in the regular course of business or otherwise in the sale or distribution of cement or otherwise it caused cement to be transported from the various points of its production through or into other states of the United States, with the exception of California, Oregon, Washington, Nevada, and Arizona, and avers that a comparatively small portion of its business in cement was conducted in said states in interstate commerce, and that the greater portion of its business in said states was in intrastate commerce. This respondent denies that it is in competition with other producing respondents except those engaged in the sale of cement in the states above mentioned. This respondent denies that such competition or any competition has been hindered or lessened or restricted or restrained as alleged in Paragraphs Four to Seven, inclusive, of said Count I, or any part thereof, or

otherwise. This respondent admits the Institute is not engaged in commerce but denies that the Institute is engaged in aiding this respondent or any other producing respondent in carrying out said or any methods unlawful or otherwise as alleged in said Count I which directly and substantially or directly or substantially affect competition among its members or any thereof.

Further answering the allegations contained in paragraph II of said Count I, this respondent states that it is without knowledge as to any of the said allegations which are not herein specifically admitted or denied, and basing its answer thereon, denies the same, and each and every part thereof.

K. PENN-DIXIE answers Paragraph Two of Count I as follows:

2. This respondent denies each and every allegation contained in Paragraph Two thereof, except that the said Institute is not engaged in commerce; that certain of the producing respondents therein referred to, including this respondent, are in competition with certain others of the producing respondents; that this respondent, in the regular course of conduct of its business, ships and causes some of its product to be transported from its mills in certain states through and into other states of the United States; and except that it is without knowledge as to the truth of the other allegations respecting the said producing respondents other than itself.

L. RIVERSIDE answers Paragraph Two, Count I as follows:

Paragraph Two: Answering Paragraph Two of said Count, it alleges that it is without knowledge as to the facts, or any of them on said paragraph alleged, except the following: Except to the extent hereinafter in this paragraph admitted and alleged, it denies that, in the regular or other course of its business in the sale or distribution of cement, this respondent causes the same, or any thereof, to be shipped or transported from the various or any points or point of its production in the State of California through or into other states of the United States. In this connection, it admits and alleges that over the five-year period from 1932 to 1936, both inclusive, approximately 94% of the cement manufactured or produced by this respondent was shipped and transported in intrastate commerce to

points within the State of California, said State of California being the state in which said cement was manufactured and produced by this respondent. Of the approximate 6% of said cement not so shipped in intrastate commerce, as aforesaid, approximately 5% thereof was shipped in interstate commerce to points at and in the State of Arizona. The remaining approximate 1% of its production during said five-year period was shipped and transported to points at and in the State of Nevada and the Territory of Hawaii. The facts hereinabove admitted and alleged as to the scope and extent of the intrastate and interstate commerce of this respondent with regard to the shipping and transportation of cement reflect with approximate accuracy the scope and extent of its shipments in intrastate and interstate commerce at the present time. It further alleges in this connection that at the trial hereof, it will be prepared to offer exact proof as to the respective amounts of cement shipped by it in intrastate and interstate commerce, as aforesaid.

It admits that this respondent is in competition with other producing respondents in the territory served by it, to wit, the States of California, Arizona and Nevada, and the Territory of Hawaii. It denies that such competition has been hindered, lessened, restricted, or restrained, either as alleged in Paragraphs Four to Seven inclusive, of said Count, or otherwise, or at all. It admits that the Institute is not engaged in commerce, and denies that the Institute is engaged in aiding this respondent, or, to its knowledge, any respondent, in carrying out such or any unlawful methods, either as alleged in said Count or which directly or substantially or otherwise affect competition among its members, or any thereof, or otherwise, or at all.

M. SUPERIOR, INC. answers Paragraph Two of Count I as follows:

Interstate Character of Producing Respondent's Commerce.

Paragraph Two: Answering Paragraph Two of Count I this respondent denies that it is engaged in interstate commerce, and denies each and all of the allegations contained therein so far as they relate to the activities of this respondent, and alleges that it is without knowledge as to the allegations therein contained as they affect the other respondents herein, and therefore denies the same.

N. YOSEMITE answers Paragraph Two of Count I as follows:

II.

Answering the allegations contained in Paragraph Two of the first count of the complaint, this respondent denies, except as hereinafter in this paragraph alleged, that in the regular or other course of the business of this respondent in the sale and distribution of cement or in the sale or distribution of cement it causes cement to be shipped and transported or to be shipped or transported from the various points of its production in certain respective states through and into or through or into other states of the United States. In this behalf this respondent alleges that in the regular course of its business it from time to time causes to be shipped and transported cement from Merced, in the State of California (that being the sole point and place of production of cement by this respondent), into the states of Nevada and Oregon, but not into or through any other state or states of the United States. This respondent denies that it is in competition with any respondent or respondents, except such respondents as have a mill or mills in any of the states of California, Nevada, Oregon and Washington, and denies that it is in competition with any respondent or respondents, except in one or more of said last named states; denies that such alleged or any competition whatsoever engaged in by this respondent has been or is hindered, lessened, restricted or restrained as alleged in Paragraphs Four to Seven, inclusive, of the complaint, or in any manner or to any degree whatsoever, or at all; admits that the Institute is not engaged in commerce but denies that it is engaged in aiding this respondent in carrying out said alleged unlawful methods, or any unlawful method or methods whatsoever, which directly and substantially or directly or substantially or otherwise or at all affect competition among its members or any of them.

Further answering the allegations contained in Paragraph Two of the first count of the complaint, this respondent alleges that it either alone or with any other respondent or respondents is not and has not been carrying out or engaging in any unlawful method or methods which directly or substantially or otherwise or at all affect competition in the sale or distribution of cement in interstate commerce, and that it has not been nor is it carrying out

or engaging in any unlawful method or methods whatsoever.

This respondent is without knowledge concerning the allegations in said Paragraph Two which it has not herein specifically admitted or specifically denied and therefore it denies such allegations and each of them.

PARAGRAPH THREE OF COUNT ONE. COMPLAINT.

The Industry.

Paragraph Three: Cement is a standard commodity made in standardized specifications not differing substantially among producers in quality except as between recognized and standardized grades thereof. Its production belongs to the class of heavy-goods industries. The carriage charges, for an overwhelming proportion of the sales of cement, constitute a substantial part of the cost to the customer.

Limestone and shale, from which cement is made, and the necessary fuels are found in numerous parts of the country. Cement is produced in widely separated portions of the country and in all sections thereof, including the following states named in approximately the order of the volume of their production, namely: Pennsylvania, California, New York, Illinois, Michigan, Ohio, Missouri, Texas, Iowa, Kansas, Tennessee, and Alabama. It is also produced in Arkansas, Colorado, Florida, Georgia, Idaho, Indiana, Kentucky, Louisiana, Maine, Maryland, Minnesota, Montana, Nebraska, New Jersey, Oklahoma, Oregon, South Dakota, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

During the period from 1920 to 1930, inclusive, the production of cement varied from over 99 million barrels to 178 million barrels, and the value thereof from over $187,000,000 to over $288,000,000. Thereafter the production in barrels and value was greatly reduced to a minimum of about 64 million barrels with a valuation of about $85,000,000 in 1933. The recent trend of production has been strongly upward.

More than one-third of the cement produced in the United States is purchased and used for the building, construction, reconstruction and repair of highways, and more than one-fourth in the erection of buildings. Cement is purchased

by contractors for such jobs and projects in great quantities, by Federal and State Governments and by counties, highway districts and other quasi-municipal bodies having taxing powers.

ANSWERS.

I. Form of Answer Used by The Cement Institute and Certain Producers.

THE CEMENT INSTITUTE and the following companies use a similar form, with variations of substance as noted in the footnotes:

Alpha
Arkansas
Ash Grove
Bessemer
California
Castalia
Colorado
Consolidated
Coplay
Cumberland
Dewey
Edison
Federal
Florida
Georgia
Giant
Glens Falls
Green Bag W. Va.
Hawkeye
Hercules
Hermitage
Idaho*
Keystone
Kosmos
Lawrence
Lehigh
Lone Star
Medusa
Missouri
Monarch
Monolith Midwest
National
Nazareth
Nebraska
North American
Northwestern States
Oklahoma
Oregon
Peerless
Penn-Dixie
Petoskey
Pittsburgh
Utah
Signal Mountain
Southern States
Southwestern
Spokane
Standard
Superior
Three Forks
Trinity
Union
Universal Atlas
Volunteer
Vulcanite
Wabash
West Penn
Whitehall
Wolverine

* IDAHO amended answer.

Paragraph Three: This respondent avers that cement[1] is made from various raw materials, including slag and marl, as well as limestone and shale.[2] On information and belief it avers that of all the cement produced in the United States, the percentage purchased and used for the building, construction, reconstruction and repair of highways[3] varies from year to year,[4] that such percentage has varied within the past ten years from about 16% to about 37%, that such percentage was about 16% in 1935 and in 1936, and that the average for the four years from 1933 to 1936 inclusive was about 20%; that of all cement produced in the United States the percentage used in the erection of buildings has varied from year to year, and that such percentage was about 20%[5] in 1936.[6]

Except as hereinabove set forth,[7] this respondent admits the substantial accuracy of the allegations of Paragraph Three.[8]

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[1] NORTH AMERICAN substitutes "Portland cement (one of the classes of cement made by this respondent)" for "cement."

[2] CALIFORNIA substitutes for the entire preceding sentence "alleges that the portland cement made by respondent, is manufactured from various raw materials including limestone and shale."

SPOKANE omits everything in Paragraph Three after the word "shale".

[3] VOLUNTEER inserts "and in the erection of buildings".

[4] THE CEMENT INSTITUTE omits from the words "year to year" to the words "about 20%;"

VOLUNTEER substitutes "but it is not advised as to the percentage of variation, and therefore denies the allegations of the complaint as to these matters of percentage of variation" for the rest of the paragraph after "year to year."

[5] CONSOLIDATED, FLORIDA, SIGNAL MOUNTAIN, TRINITY and UNIVERSAL-ATLAS substitute "34%" for "20%".

[6] THE CEMENT INSTITUTE substitutes "These respondents deny that they have any accurate knowledge of the percentages referred to in Paragraph Three". for "and that such percentage was about 20% in 1936".

[7] NORTH AMERICAN inserts ", and except for the fact that this respondent produces Portland cement under its trademark brand and also produces another class of cement which is also under a trade-mark brand, and is covered by letters patent of the United States."

[8] THE CEMENT INSTITUTE omits the entire preceding paragraph.

SPOKANE substitutes for the above paragraph "This respondent is without knowledge of the figures contained in Paragraph Three and therefore except as hereinabove set forth, this respondent denies each and every allegation of Paragraph Three".

II. Non-Uniform Answers.

A. AETNA answers Paragraph Three of Count I as follows:

Paragraph Three. This respondent admits that cement is a standard commodity made in standardized specifications not differing substantially among producers in quality, except as between recognized and standardized grades thereof; that the production of cement belongs to the class of heavy goods industries, and that carriage charge for an overwhelming proportion of the sales of cement constitute a substantial part of the cost to the customer.

This respondent further admits that limestone and shale from which cement is made, and the necessary fuels, are found in numerous parts of the country, and that cement is produced in widely separated portions of the country and in certain of the sections named in Paragraph Three of the Complaint, but is without knowledge as to all of the sections therein named and as to the order of the volume of production therein.

This respondent is without knowledge as to the total production of cement and the value thereof and as to the proportionate use of the cement produced in the United States for building, construction, reconstruction and repair of highways and for the erection of buildings.

This respondent admits that the recent trend of production of cement has been upward.

B. BEAVER answers Paragraph Three of Count I as follows:

Paragraph Three: This respondent admits that the allegations of Paragraph Three are substantially accurate.

C. CALAVERAS answers Paragraph Three of Count I as follows:

Paragraph Three: This respondent admits the substantial accuracy of Paragraph Three of Count I of said complaint in so far as said paragraph relates to Portland cement as described in said complaint.

D. DIAMOND answers Paragraph III of Count I as follows:

"The Industry".

Paragraph Three: Respondent admits that cement is, generally speaking, a standard commodity, made to more

or less standardized specifications, not substantially different in quality, among producers in a given section of the country, except as between recognized grades thereof and that its product belongs to the class of Heavy Goods Industries.

Respondent admits that carriage charges add to the cost of the cement to the customer, but denies that for an overwhelming proportion of the sales of cement they constitute a substantial part of the cost to the customer, and further avers that over a period of years carriage charges on more than eighty-five percent (85%) of the product of this company shipped by it were less than forty cents (40c) per barrel, and less than twenty-five percent (25%) of the sale price of such cement.

Respondent admits that limestone, slag, marl, shell and shale, the principal ingredients entering into the manufacture of cement and the necessary fuels are found in numerous parts of the country, and further avers the fact to be that all of the materials commonly used in the manufacture of cement and the necessary fuels used by this respondent are produced in large quantities in the State of Ohio.

Respondent admits that there was variation in cement production and in the sale price of cement during the period of 1920 to 1930 inclusive, and further admits that after 1930 the production of cement decreased until, and during, the year 1933, and says that the same statement could be truthfully made concerning practically every commodity manufactured in the United States during said period, and it avers that such condition and lack of demand for cement existed despite the fact that during said period cement was sold at approximately the actual cost thereof and in many instances for less than its cost.

It further admits that the recent trend of cement production has been upward and avers the fact to be that such variation in production and such upward trend were caused solely by the variations in demand for cement. This respondent does not know the total amount of cement manufactured, or the total value thereof, for any of the years from 1920 to the present time, and it therefore denies the allegations of the complaint with respect thereto and asks that strict proof thereof be required if the matter shall be found to be proper and material in this cause.

This respondent admits that cement is purchased and used for the building, construction, reconstruction, and

repair of highways, and in the erection of buildings, and that it is purchased by contractors for such work, and by Federal and State governments, and by Counties, highway districts, and other quasi municipal bodies having taxing power, and avers further that large quantities of cement are used by the general public. Respondent does not know the percentages, or proportions of cement sold and used in the country for any of the several purposes set forth in the complaint, and it therefore denies that the allegations of the complaint with respect thereto are correct and asks that strict proof thereof be required.

E. GRREN BAG PA. answers Paragraph Three of Count I as follows:

Paragraph Three: This respondent is without knowledge as to the allegations of the third and fourth paragraphs of Paragraph Three. Respondent does not sell cement nationally, but confines its sales to the Northern West Virginia, Western Pennsylvania, Western New York, Eastern Ohio, and Washington, D. C. areas. Respondent is familiar with its market, but it is not familiar with the national market.

Except as hereinabove set forth, this respondent admits, on information and belief, the substantial accuracy of the allegations of Paragraph Three.

F. HURON answers Paragraph Three of Count I as follows:

Paragraph Three: It admits the matters set forth in the first subdivision of Paragraph Three.

It admits on information and belief the matters set forth in the second subdivision of Paragraph Three, except that it shows that cement is made from other raw materials than limestone and shale.

It admits on information and belief the matters set forth in the third subdivision of Paragraph Three.

It admits that a substantial proportion of cement produced in the United States is used as set forth in the fourth subdivision of Paragraph Three but has no knowledge of the proportion so used. It admits that its cement is purchased by contractors for the construction and repair of highways and for the erection of public buildings, as alleged in said fourth subdivision of Paragraph Three.

G. IDAHO* answers Paragraph Three of Count I as follows:

III.

Answering Paragraph Three of Count I, the respondent Idaho Portland Cement Company admits each and every allegation therein contained.

H. MONOLITH answers Paragraph Three of Count I as follows:

Paragraph Three: This respondent admits the substantial accuracy of the allegations contained in Paragraph Three of the Complaint.

I. NORTHWESTERN answers Paragraph Three of Count I as follows:

The Industry.

Paragraph Three: Respondent states that cement is made from various raw materials, including slag and marl, as well as limestone and shale. The percentage of all the cement produced in the United States which is purchased and used for the building, construction, reconstruction and repairing of highways, varies from year to year, and within the past ten years has varied from approximately 16% to 37%. The percentage was 16% in 1935 and in 1936, the average for the four years from 1933 to 1936, inclusive, being about 20%. Likewise, the percentage of the cement produced in the United States which is used in the erection of buildings has varied from year to year, the percentage being about 20% in 1936.

This respondent admits the substantial accuracy of the allegations contained in Paragraph Three other than as hereinabove set forth.

J. PACIFIC does not specifically answer Paragraph III of Count I.

K. RIVERSIDE answers Paragraph Three of Count I as follows:

Paragraph Three: It admits the substantial accuracy of the allegations set forth in Paragraph Three.

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*Original answer.

L. SANTA CRUZ answers Paragraph Three of Count I as follows:

III.

"This respondent admits the substantial accuracy of the allegations contained in Paragraph Three of the complaint."

M. SUPERIOR, INC. answers Paragraph Three of Count I as follows:

The Industry.

Paragraph Three: Answering Paragraph Three of Count I this respondent admits the substantial accuracy of the allegations therein contained with reference to the general nature of the cement industry.

N. YOSEMITE answers Paragraph Three of Count I as follows:

This respondent admits the substantial accuracy of the allegations contained in Paragraph Three of the complaint.

PARAGRAPH FOUR OF COUNT ONE:

COMPLAINT.

Respondents' Combination Generally Stated.

Paragraph Four. For more than eight years last past, respondents have maintained and now have in effect a combination among themselves to hinder, lessen, restrict and restrain competition in price, among producing respondents in the course of their aforesaid commerce among the states. The said combination is made effective by mutual understanding or agreement to employ, and by the actual employment of, the methods and practices set forth in Paragraphs Five to Seven inclusive, of this Count.

ANSWERS.

I. Form of Answer Used by The Cement Institute and Certain Producers.

THE CEMENT INSTITUTE and the following companies use a similar form, with variations of substance as noted in the footnotes:

Aetna
Alpha
Arkansas
Ash Grove
Bessemer
Castalia
Colorado
Consolidated
Coplay
Cumberland
Dewey
Diamond
Edison
Federal
Florida
Georgia
Giant
Glens Falls
Green Bag Pa.
Green Bag W. Va.
Hawkeye
Hercules
Hermitage
Huron
Idaho
Keystone
Kosmos
Lawrence
Lehigh
Lone Star
Medusa
Missouri
Monarch
Monolith Midwest
National
Nazareth
Nebraska
North American
Northwestern
Northwestern States
Oklahoma
Oregon
Peerless
Penn-Dixie
Petoskey
Pittsburgh
Utah
Signal Mountain
Southern States
Southwestern
Spokane
Standard
Superior
Three Forks
Trinity
Union
Universal Atlas
Volunteer
Vulcanite
Wabash
West Penn
Whitehall
Wolverine

Paragraph Four: This respondent denies each and every allegation[1] of Paragraph Four.[2]

II. Non-Uniform Answers.

A. BEAVER answers Paragraph Four of Count I as follows:

Paragraph Four: This respondent denies that now or at any time in the past it has maintained or had in effect or been a party to any combination with any other producer of cement, or with any others, to hinder, lessen, restrict or restrain competition in price between this respondent and any other producer of cement or any others in the course of its or any of their commerce among the states. This respondent denies the existence of any understanding or agreement to which it is a party or the employment by it of any of the methods or practices set forth in Paragraphs Five to Seven of the complaint, or any other methods or practices to effect, establish, maintain or employ such a combination or any combination, or to effect or reach such understanding or agreement, or any understanding or agreement. This respondent denies each and every allegation of Paragraph Four of the complaint.

B. CALAVERAS answers Paragraph Four of Count I as follows:

Paragraph Four: For answer to the allegations contained in Paragraph Four of Count I of said complaint, this respondent denies that for more than eight years last past, or for or at any time or times whatsoever or at all, it and any other respondent, or it and any other person, firm or corporation, have maintained or now have in effect, or have maintained or ever have had in effect, a combina-

[1] AETNA substitutes "denies the allegations" for "denies each and every allegation".

HURON substitutes "denies each and all of the matters set forth" for "denies each and every allegation".

[2] NORTHWESTERN inserts ", and particularly denies that it now maintains or has at any time in the past maintained or been a party to any combination of any sort to hinder, lessen, restrict or restrain any competition in price in the sale of cement".

OREGON inserts "of the Complaint and particularly denies that it has at any time participated in or maintained or now has in effect any combination with any other producing respondents or with any two or more of them or with any of them and any others, or with any others, to hinder, lessen, restrict or restrain competition in price in the sale of cement."

tion to hinder, lessen, restrict and restrain competition in price among the producing respondents, or any combination to hinder or lessen or restrict or restrain in any manner or to any degree whatsoever or at all, competition in price among the producing respondents or any of them, or any persons, firms or corporations whatsoever, in the course of the alleged or any commerce among states or any of them or at all; denies that said alleged combination or any combination whatsoever is made or ever has been effective or otherwise by mutual understanding or agreement, or any understanding or agreement whatsoever, to employ and by the actual employment of, or to employ or by the actual employment of, the methods and practices, or the or any method or methods or practice or practices, or any of them, set forth in Paragraphs Five to Seven, inclusive, of Count I of said complaint, or in any of said or any paragraphs of said Count I, or in any paragraph of said complaint.

For further answer to the allegations contained in said Paragraph Four of Count I of said complaint, this respondent states that it is without knowledge as to any of said allegations which it has not herein specifically admitted or denied.

C. CALIFORNIA answers Paragraph Four of Count I as follows:

Paragraph Four: Denies that for more than eight years last past, or at any time, it has made or entered into, maintained, or now has in effect, or is a party to, any combination, understanding or agreement, with all or any of the other respondents, either to hinder, lessen, restrict or restrain competition in price, or in the sale of cement in the course of any commerce amongst the states, or otherwise or at all. This respondent has no knowledge of said, or any, such combination, understanding or agreement amongst or between all or any of the other respondents, and upon that ground denies the making or the existence thereof. Denies that said alleged, or any, combination is made effective by mutual, or any, understanding or agreement to employ, or by the actual employment of, all or any of the methods or practices set forth in Paragraphs Five to Seven, inclusive, of Count I of the complaint, or by any other methods or practices, or otherwise, or at all. This respondent denies that it has at any time been a party to,

or had any knowledge of, any such agreement or understanding, or that it has employed any of the methods or practices set forth in said Paragraphs Five to Seven, inclusive.

D. MONOLITH answers Paragraph Four of Count I as follows:

Paragraph Four: This respondent denies each and every allegation of Paragraph Four of the Complaint, and particularly denies that it ever has had or now has in effect any combination with any other respondent or respondents or any others to hinder, lessen, restrict and restrain competition in price in the sale of cement.

E. PACIFIC answers Paragraph Four of Count I as follows:

II.

Answering the allegations contained in paragraph IV, this respondent denies each and every all and singular, the allegations contained therein, and particularly denies that this respondent has at any time been a party to or is now a party to any combination with any of the other respondents to hinder or lessen or restrict or restrain competition in price in the sale of cement or otherwise.

F. RIVERSIDE answers Paragraph Four of Count I as follows:

Paragraph Four: It is without knowledge as to the facts, or any of them, in Paragraph Four alleged, except the following: It denies that for more than eight years last past, or at any time or at all, this respondent has been or now is a party to any combination, either among or with respondents or certain of them or any of them, or to hinder, lessen, restrict, or restrain competition in price, or among producing respondents, or any of them, in the course of their aforesaid or any commerce among the states, or any of them, or otherwise or at all. So far as its knowledge is concerned, this respondent denies that said or any combination either exists or ever has had any existence in fact, or that it is made effective by mutual or any understanding or agreement to employ, or by the actual employment of, the methods or practices set forth in Paragraphs Five to Seven, inclusive, of Count I, or any methods or practices, or otherwise or at all. It denies that

it has at any time been a party to or had any knowledge of any such agreement or understanding.

G. SANTA CRUZ answers Paragraph Four of Count I as follows:

IV.

Answering the allegations contained in Paragraph Four of the first count of the complaint, this respondent denies that for more than eight years last past, or at any time or times whatsoever or at all, it and any other respondent, person, firm or corporation acting in concert or at all, have maintained and now have in effect, or have maintained or now have in effect, any combination whatsoever to hinder, lessen, restrict and restrain or to hinder, lessen, restrict or restrain competition in price among the producing respondents, or any of them, or among any persons, firms or corporations whatsoever in the course of the said alleged or any commerce among the states, or any of them, or at all denies that said alleged combination or any combination whatsoever is made or ever has been made effective by mutual understanding or agreement or otherwise with this respondent to employ, and by the actual employment of, or by the actual employment of, the methods and practices or the methods or practices, or any of them, set forth in Paragraphs Five to Seven, inclusive, or set forth in any of the said paragraphs of the first count of the complaint.

This respondent is without knowledge concerning the allegations in said Paragraph Four which it has not herein specifically admitted or specifically denied and therefore it denies such allegations and each of them.

H. SUPERIOR, INC. answers Paragraph Four of Count I as follows:

Respondent's Combination Generally Stated.

Paragraph Four: Answering Paragraph Four of Count I this respondent denies each and every allegation therein contained, and particularly denies that it has at any time maintained or now has in effect any combination with any of the producing respondents, or any other person, firm or corporation for the purpose of hindering, lessening, restricting or restraining competition in price in the sale of cement.

I. YOSEMITE answers Paragraph Four of Count I as follows:

IV.

Answering the allegations contained in Paragraph Four of the first count of the complaint, this respondent denies that for more than eight years last past, or at any time or times whatsoever or at all, it and any other respondent, person, firm or corporation acting in concern or at all, have maintained or now have in effect, or have maintained or now have in effect, any combination whatsoever to hinder, lessen, restrict and restrain or to hinder, lessen, restrict or restrain competition in price among the producing respondents, or any of them, or among any persons, firms or corporations whatsoever in the course of the said alleged or any commerce among the states, or any of them, or at all; denies that said alleged combination or any combination whatsoever is made or ever has been made effective by mutual understanding or agreement or otherwise with this respondent to employ, and by the actual employment of, or by the actual employment of, the methods and practices or the methods or practices, or any of them, set forth in Paragraphs Five to Seven, inclusive, or set forth in any of the said paragraphs of the first count of the complaint.

This respondent is without knowledge concerning the allegations in said Paragraph Four which it has not herein specifically admitted or specifically denied and therefore it denies such allegations and each of them.

PARAGRAPH FIVE OF COUNT ONE.

COMPLAINT.

The Basing Point System.

Paragraph Five: (a) Among other methods employed by producing respondents in pursuance of the combination alleged in Paragraph Four hereof, said respondents, at almost all times and with respect to most of their sales, have cooperatively employed what is known as a multiple basing point system of pricing. Thereunder, all cement, wherever produced, is sold only at delivered prices.

(b) Under the said multiple basing point system, for any destination of cement in the United States there is a

governing basing point. There are in the cement industry within the United States approximately sixty basing points, each with its base price. In arriving at a delivered cement price for any destination, the first matter to be ascertained is what basing point governs such destination. This is determined by calculating and comparing the sum of two factors for each basing point likely to govern the destination in question. These factors are the base price and the rate of all-rail freight from each respective basing point to such destination. Whatever basing point proves to have a lower total of these two facts than the corresponding total of the same factors for any other basing point governs the price at the destination in question.

(c) Under said pricing system, each producing respondent whether its mill be located at a basing point or not, quotes and charges to any given destination in the United States, where it desires to make a sale, a delivered price derived by the use of a formula. Such formula is: the prevailing base price at the governing basing point plus the all-rail rate of freight from said governing basing point to the location of the customer. The said multiple basing point system is hereinafter referred to as "said pricing system."

(d) The result is the quoting of a delivered price by every producing respondent identical with the delivered price quoted by all other respondents which seek business at any given destination point in the United States.

ANSWERS.

I. Answer of The Cement Institute.

THE CEMENT INSTITUTE answers Paragraph Five of Count I as follows:

Paragraph Five: These respondents deny that they have cooperatively employed among themselves or with any other persons what is known as and what is described in the complaint as a multiple basing point system of pricing. These respondents are not producers and are not engaged in commerce, and they deny each and every allegation of Paragraph Five, and sub-paragraphs (a), (b), (c) and (d) thereof.

II. Form of Answer Used by Certain Producers.

The following companies use a similar form, with variations of substances as noted in the footnotes below:

Alpha	Monarch
Arkansas	Monolith Midwest
Ash Grove	National
Bessemer	Nazareth
Castalia	Nebraska
Colorado	North American
Consolidated	Northwestern States
Coplay	Oklahoma
Cumberland	Peerless
Dewey	Petoskey
Federal	Pittsburgh
Florida	Utah
Georgia	Signal Mountain
Giant	Southern States
Glen Falls	Spokane
Green Bag W. Va.	Standard
Hawkeye	Superior
Hercules	Three Forks
Hermitage	Trinity
Idaho*	Union
Keystone	Universal Atlas
Kosmos	Volunteer
Lawrence	Vulcanite
Lehigh	Wabash
Lone Star	West Penn
Medusa	Whitehall
Missouri	Wolverine

Paragraph Five: (a) This respondent denies that it has[1] cooperatively[2] employed with others[3] what is described in the complaint as a multiple basing point method

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* Idaho amended answer.

[1] VOLUNTEER substitutes "and the other producing respondents named in the complaint have" for "has".

[2] STANDARD inserts "or otherwise".

[3] ALPHA, MISSOURI, NORTH AMERICAN, STANDARD and VOLUNTEER omits "with others".

of pricing.[4] It admits that cement is generally sold at destination prices,[5] but it denies that there is[6] any mutual understanding, agreement, or combination[7] to sell cement at[8] any agreed prices[9] or in any particular manner.[10]

Except as hereinabove set forth this respondent denies each and every allegation of Paragraph Five, and sub-paragraphs (a), (b), (c) and (d) thereof.[11]

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[4] SPOKANE inserts "It avers that for approximately eight years last past this respondent has not employed, and does not now employ, the so-called multiple basing point system described in Paragraph Five of the complaint." SPOKANE in its Amended Answer inserts "It avers that this respondent has at no time employed, and does not now employ, the so-called multiple basing point system described in Paragraph Five of the Complaint."

[5] MISSOURI, NORTH AMERICAN and STANDARD insert "within its marketing area".

[6] MISSOURI and STANDARD substitutes "it is or ever has been a party to or has any knowledge of" for "there is".

NORTH AMERICAN substitutes "it has been a party to or has any knowledge of" for "there is".

[7] VOLUNTEER inserts "between it and other producing respondents".

[8] MISSOURI, NORTH AMERICAN and STANDARD insert "destination prices or at".

[9] VOLUNTEER omits "at any agreed prices or".

[10] ALPHA, GIANT and NAZARETH, except as noted below, insert after the above paragraph the following two paragraphs, and VOLUNTEER, except as noted below inserts the second of these paragraphs:

"(b) and (c). This respondent admits that sub-paragraph (b) and (c) of Paragraph Five substantially describe what is called in the complaint[a] a multiple basing point method of pricing and admits that such pricing[b] method among other methods is frequently used by this respondent in determining the price which it will quote at a particular time and place.

(d) This respondent admits that the delivered price[c] quoted by it are often identical with delivered prices[c] quoted by other respondents or by other producers[d] at any given destination point; but it denies that this is the result of any combination, agreement or understanding."

[a] GIANT substitutes "known as" for "called in the complaint".

[b] NAZARETH omits the word "pricing".

[c] GIANT, NAZARETH and VOLUNTEER use the phrase "destination prices" in the place of "delivered prices".

[d] VOLUNTEER omits "or by other producers;".

GIANT substitutes "others" for "other respondents or by other producers".

NORTH AMERICAN inserts "This respondent further avers that the destination price method of marketing cement was approved by the Supreme Court of the United States in 1925 in the case of *Cement Manufacturers Protective Association* v. *United States*, 268 U. S. 588."

IDAHO in its amended answer inserts after the above paragraph the following paragraph:

"This respondent denies that it uses the so-called multiple basing point system and alleges that it has at no time refused to quote to any customer or prospective customer a price f. o. b. its mills."

[11] VOLUNTEER omits "and sub-paragraphs (a), (b), (c) and (d) thereof".

III. Non-Uniform Answers.

A. AETNA answers Paragraph Five of Count I as follows:

The Basing Point System.

Paragraph Five: This respondent denies the allegations contained in Paragraph Five of the Complaint, except that:

As to section (a) thereof, it admits that the major portions of its production is sold at delivered prices and states that such a method of price quotation is necessary inasmuch as the competition to be met is at the destination.

As to sections (b) and (c) thereof, it admits that there are at any time many points in or near the localities in which it distributes its product as to which the price quotations of one or more cement producers are known, and that in certain of said localities the price quotation for its cement is determined by calculating the sum of that known price and the all-rail freight rate to the destination in question which will give the lowest total, and then determining whether it will quote or refrain from quoting to meet the competition at such destination. This respondent states that such method of determining the price for its production is not used in the major portion of its sales, but that on the contrary more than sixty per cent of its production is sold on the basis of prices otherwise determined.

As to section (d) thereof, it admits that at times it and other producing respondents quoting on cement in localities in which this respondent distributes its product quote identical delivered prices.

This respondent denies that there is any mutual understanding, agreement or combination to sell cement at any agreed prices or in any particular manner.

B. BEAVER answers Paragraph Five of Count I as follows:

Paragraph Five: This respondent denies that it now employs; or that it has ever employed what is described in the complaint as a multiple basing point system of pricing. This respondent admits that cement is generally sold by it and other producers at destination prices, but denies that the cement produced by it is sold at destination prices only, and alleges that it has sold cement at its point of

production, Gold Hill, Oregon, at prices f.o.b. at mill. This respondent admits that in quoting the delivered price of its product to any destination at which it desires to make a sale, it takes into consideration the freight rate from its point of production, Gold Hill, Oregon, to the location of the prospective customer. This respondent is without knowledge of the other facts or matters pleaded in said Paragraph Five, and therefore denies each and every allegation of said Paragraph Five, except the allegations thereof hereinbefore specifically admitted.

C. CALAVERAS answers Paragraph Five of Count I as follows:

Paragraph Five: For answer to the allegations contained in Paragraph Five of Count I of said complaint, this respondent denies that at any time or times or at all, either alone or with any other respondent or respondents, it has employed what is known as a multiple basing point system of pricing referred to in said Paragraph Five and elsewhere in said complaint; denies that it had employed any means in pursuance of any combination whatsoever or at all.

For further answer to the allegations contained in said Paragraph Five of Count I of said complaint, this respondent states that it is without knowledge as to any of said allegations which it has not herein specifically denied.

D. CALIFORNIA answers Paragraph Five of Count I as follows:

Paragraph Five: (a) Alleges that it does not employ, and has not employed, cooperatively or otherwise what is known as a, or the, so-called, multiple basing point system of pricing referred to or described in Paragraph Five of Count I of the complaint. Alleges that the whole of its business is intrastate business, confined to the State of California, with the exception of a small amount of cement sold within and/or shipped to points in Arizona, constituting less than 3% of its business. Alleges that in order for respondent to sell any of its cement at certain points in the eastern portion of Arizona, respondent has had to meet, and in good faith has met, the delivered price for cement at such points shipped from a competing mill located in El Paso, Texas, the fright rates from which to said points in the eastern portion of Arizona are slightly lower than the freight rates to said points from respondent's

mill at Colton, California. This has resulted, for said very small quantities of cement sold and shipped by it in the eastern portion of Arizona, in a mill net slightly lower than for its other cement. The cement shipped by it into said points in the eastern portion of Arizona constitutes less than 1% of the cement manufactured and sold by respondent. Alleges that the delivered prices for its cement at said points in the eastern portion of Arizona, or elsewhere, have not been fixed or made pursuant to any understanding or agreement with any other mill or mills, but have been fixed independently by it and solely for the purpose of meeting the competitive price for cement at said points. Alleges that it is not the policy of respondent to make sales of cement in such portions of Arizona except for the purpose of supplying some of its existing customers who have need for cement in such areas, and respondent does not solicit, and has not actively solicited, the sale of cement in such portions of Arizona. The said alleged multiple basing point system is not employed or used by any of the manufacturers or producers of cement which sell and distribute cement in the geographical areas in which respondent sells and distributes its cement, in so far as the knowledge of this respondent goes, and upon such knowledge and information this respondent so alleges the facts to be. This respondent has no knowledge of the other facts alleged in subdivision (a) of Paragraph Five of Count I of the complaint, and upon that ground denies each and every of same.

(b) This respondent is without knowledge as to any of the facts alleged in subparagraphs (b), (c) and (d) of Paragraph Five of said Count I with respect to said alleged multiple basing point system, and upon that ground this respondent denies each and every allegation thereof.

E. DIAMOND answers Paragraph Five of Count I as follows:

Paragraph Five: This respondent denies that among other methods employed by the producing respondents, and with particular reference to this answering respondent, it denies that in pursuance of the combination alleged in paragraph 4 of this complaint, this respondent at almost all times, and with respect to most of its sales, has cooperatively employed what is known as a multiple basing point system of pricing. Respondent admits that it is advised, although it does not definitely know, that a large

proportion of the cement produced in the country is sold at destination prices and says further that such method of sale has long been a custom of the industry. It denies that it is or ever has been a party to or has any knowledge of any mutual understanding, agreement, or combination to sell cement at destination prices or at any agreed prices or in any particular manner. This respondent admits that such destination price method has been frequently referred to in the cement industry as a multiple basing point method of pricing and that the mills which have from time to time assumed price leadership have been frequently referred to in the industry as basing points, but this respondent is informed and believes and therefore states that any such so-called basing points are not arbitrarily determined, have no fixity, and are not the result of any agreement or understanding or concerted action. In short, this respondent states that it has at all times been free to make any price for, and sell cement in any manner it has chosen.

It denies that in the alleged multiple basing point system for any destination of cement in the United States, there is a governing basing point. It does not know that there are in the cement industry within the United States approximately sixty basing points, each with its base price, and that in arriving at a delivered cement price for any destination the first matter to be ascertained is what basing point governs such destination and asks that strict proof thereof be required, and respondent says that in making up its price for cement to be delivered at any place within the limited territory reached by it, it first ascertains from customers the price quoted and terms and conditions at the place of destination and that it meets such price and terms and conditions, if acceptable.

Respondent further says that its sales are limited by the nature of its product to a distance seldom greater than one hundred and fifty miles from its plant; that there are in Ohio ten cement manufacturing plants, one of which is not operating; that it meets in competition generally at any particular point, usually not over ten or twelve other manufacturers but that there are perhaps thirty or more Producers competing in various parts of the entire territory served by respondent, most of whom are likewise limited by practical distance of shipment and who compete in said territory within the practical distance from their several plants.

Respondent denies that it quotes and charges to any given destination in the United States where it desires to make a sale, a delivered price derived by the use of a formula, and it denies that the formula is the prevailing base price at the governing basing point, plus the all-rail rate of freight from said governing basing point to the location of the customer, and says that on the contrary its prices are made on the basis of the prevailing price at the place where delivery is to be made.

Respondent denies every allegation of Paragraph Five not herein specifically admitted or denied.

F. EDISON answers Paragraph Five of Count I as follows:

Paragraph Five: (a) Denies that it has itself employed or cooperatively employed with others what is described in the complaint as "a multiple basing point system of pricing"; denies that there is any mutual understanding, agreement, or combination to sell cement at any agreed prices or in any particular manner; and denies that this respondent has or employs any system or systematic method of any kind in pricing cement. This respondent avers that it is not, and does not pretend to be a leader in the setting of cement prices. This respondent, so far as prices are concerned, is a follower. It meets competition or it does not do business. In quoting its price to a prospective customer in a particular locality, this respondent, having ascertained the price then and there being quoted by its competitors, meets competition and quotes that price to its prospective customer if such competitive price is one at which respondent can advantageously sell cement. The cement business, at least throughout the area in which this respondent sells cement, is highly competitive, so that there is no possibility of respondent's making a sale unless it meets the competitive price to a penny.

If, as to any prospective sale, respondent should depart from its role as a price follower, and assume the role of price leader, and should accordingly quote a price lower than the lowest price set by its competitors in that locality, such quoting of a lower price would not result in any increased sales of this respondent's cement, or in any sale at all, but would of a certainty, and immediately, be met with the quotation of an equally low, or lower price, by its competitors.

This respondent's practice of merely meeting, but never quoting below, the prices set by its competitors, does not result from any agreement or understanding, express or implied, with any other producer, and is not in pursuance of any such combination as is alleged in Paragraph Four of the complaint, but results merely from this respondent's inability, as a relatively small producer, to assume successfully, at any time or in any locality or with respect to any prospective sale or sales of cement, the role of leader or "pace-setter", or price-fixer, and from the practical unwisdom of any such course on respondent's part as a matter of business policy.

This respondent's method of ascertaining its competitors' prices, in any given locality, is as follows: Respondent employs 28 salesmen operating from sales offices in New York, Boston and Philadelphia. These salesmen are in constant touch with dealers and other prospective customers in the localities which they serve and from them learn what prices are being quoted by respondent's competitors. The salesmen report that information to respondent and respondent records such prices as those currently "prevailing" in the respective localities, until it receives new information that its competitors are quoting different prices therein. This respondent notifies its salesmen from time to time of the price to be quoted in each locality. If the competitors' price, as reported by said salesmen, is one at which this respondent can advantageously do business, this respondent thereupon, in its instructions to its salesmen in that locality, names said price as the price to be quoted, otherwise, it does not do business there.

Whenever this respondent's competitors, in any given locality, quote different prices from those previously quoted, that information comes almost immediately to the ears of this respondent's salesmen in the course of their calls upon their customers, and it almost immediately becomes public knowledge to the salesmen of all of the producers doing business in such locality. If there be any doubt on this respondent's part as to the correctness of the information received from its customers through its salesmen as to a reported change in its competitors' prices in a given locality, this respondent immediately confirms by frank inquiry of the particular competitor who is reported to have changed its price, the information previously obtained from this respondent's customers through

its salesmen. In ordinary cases such information is readily confirmed by the competitor in question, because it is usually only a matter of a few hours until the information is public knowledge, because of the highly competitive nature of the cement business.

This respondent finds that in certain areas, but not all, it is possible to ascertain its competitors' prices at all of the destination points in that area by obtaining information from customers at several of such destination points and drawing inferences as to its competitors' prices at the other destination points in such area, which inferences are based upon an arithmetical relationship in certain areas between the destination prices and the freight differentials. When this respondent finds in a given locality that such arithmetical relationship exists between its competitors' prices at several different destination points therein, this respondent thereupon assumes and infers that the same relationship will be found to exist with respect to all other destination points in that locality, and proceeds to act upon such assumption in the ascertainment of its competitors' prices in said locality, unless and until it receives information to the contrary.

Neither the ascertainment by respondent of such data, nor its assumptions and inferences based upon such data, nor its acting upon such inferences and assumptions, are in any way actuated by, or the result of, any agreement, concert, or understanding, express or implied, with any of its competitors. So far as this respondent is concerned all of its observations, inferences and assumptions as aforesaid are entirely independent and objective, and said data are, so far as this respondent is concerned, entirely external to this respondent and entirely beyond this respondent's control or volition, in the creation and arranging of which this respondent does not participate even to the slightest degree.

In many other cases, representing a substantial minority, perhaps 25%, of all the cases, this respondent finds that in any given locality in which it sells cement, there is no discernible arithmetical relationship whatsoever between its competitors' prices at one destination point and its competitors' prices at any other destination point in such locality, and that the prices are not susceptible of any generalized inductions, inferences or assumptions whatsoever.

In both cases, this respondent, as aforesaid, endeavors by means of salesmen's reports or by means of assumptions and inferences therefrom, to ascertain its competitors' prices, and to quote the same prices, if it finds that it can do so advantageously, or does no business there.

There is no system or method whatsoever employed by this respondent in the quoting of its prices to prospective customers. Where it does business it meets the competitive price set by other producers. If there be any method or system in the quoting of prices by other producers, the adoption or establishment of such method or system is something entirely beyond the control or volition of this respondent, and this respondent does not in the slightest degree participate therein or contribute in the adoption or establishment thereof. This respondent's only interest in any such pricing method or system, if such exist, is in the results thereof, i. e., in ascertaining in the manner above alleged the actual price quoted by its competitors in any given locality.

This respondent admits that cement is generally sold at destination prices.

Except as hereinabove set forth this respondent denies each and every allegation of Paragraph Five, and sub-paragraphs (a), (b), (c) and (d) thereof.

G. GREEN BAG PA. answers Paragraph Five of Count I as follows:

Paragraph Five: This respondent denies each and every allegation of Paragraph Five (a).

This respondent started selling cement in 1929. It was then and still is a relatively small company. On information and belief, its annual sales in 1936 were not in excess of ½ of 1% of the total of cement sold in the United States. The manufacture of the cement sold by the respondent is an offshoot of the coke and pig iron business operated by respondent's parent company, Pittsburgh Coke & Iron Company. When it entered the business in the Pittsburgh area, respondent found an existing price structure which may be roughly described as a delivered price for cement. In entering this market respondent sought to sell its cement for the best price that customers would pay for it under prevailing competitive conditions; it could not get any more for its cement than other manufacturers offered to sell their cement for at the same destination and it was

unwilling to take less for its cement than other manufacturers could get for theirs. Accordingly, to a substantial extent, it followed competitive market prices and conditions as it found them in the territory in which it sold cement.

The respondent is without knowledge of the facts alleged in Paragraph Five (b) of the complaint.

The respondent denies each and every allegation of Paragraph Five (c) of the complaint.

The respondent denies the allegations of Paragraph Five (d) of the complaint and states that, so far as it is concerned in the sales territory in which it operates, such identity of price between respondent and other cement producers as occurs is due to competition, and that such competitive price is not the result of any combination with others but the result of knowledge of the market and freight rates charged therein.

H. HURON answers Paragraph Five of Count I as follows:

Paragraph Five: (a) As to the matters alleged in subdivision (a) of Paragraph Five, it denies on information and belief that the respondents have cooperatively employed what is described in the complaint as a multiple basing point system of pricing as a method employed in pursuance of the combination alleged in Paragraph Four, and denies that there is any such combination. It specifically denies that it has employed such method in pursuance of the combination alleged in Paragraph Four, or of any other combination. On information and belief, it denies that all cement, wherever produced, is sold only at destination prices and it denies specifically that all cement produced by it is sold only at destination prices.

(b) As to the matters set forth in subdivision (b) of Paragraph Five, it admits that the method of marketing employed in the cement industry has been sometimes loosely and inaccurately described as a multiple basing point system. It denies that there is a "basing point" for every destination of cement in the United States and it denies that, as to the cement prices to all the destinations to which it ships cement, this respondent fixes the price by the method set forth in said subdivision (b). It shows in this respect that as to all destinations in the lower Peninsula of the State of Michigan, except those in the Counties of

Wayne, Macomb and Oakland, it makes the same destination price and such price is fixed without reference to any basing point. It shows that it makes the same destination price to all destinations in the Counties of Wayne, Macomb and Oakland and shows that such destination price is fixed without reference to any "basing point". It shows that such prices are not computed by using a "basing point" price and adding thereto the rate of all-rail freight from any "basing point" to such destination. It shows also that it has established destination prices at points outside the State of Michigan, as for instance, in the Cities of Milwaukee, Wisconsin; Toledo, Ohio and Cleveland, Ohio. Said prices are fixed and determined by factors of cost and of competition.

(c) It denies, on information and belief, that each producing respondent quotes and charges prices determined as set forth in subdivision (c) of Paragraph Five. It denies that it quotes and charges at all given destinations in the United States to which it ships cement a destination price derived by the use of the formula set forth in said subdivision. It shows that the method by which it determines its price to a purchaser outside the lower peninsula of Michigan and in territory not adjacent to one of its plants, when such purchaser is at a point where it has not already a quoted price in effect is as follows.

Respondent will ascertain from its travelling salesmen or otherwise the current quotations in effect at various points in the territory adjacent to the point in question and made by other cement producers who would normally serve such point. From the quotations of the producers who serve the area of such proposed delivery point, respondent deducts the rate of freight applicable thereto. The result is taken by this respondent as the plant net of its competitors who can serve the proposed delivery point. To the plant net of the competitor most advantageously situated to serve the proposed delivery point, respondent adds the freight from such competitor's plant to the proposed delivery point and this final figure respondent assumes to be the figure which it must there quote to secure the business. It normally would not quote a lower figure for the reason that it knows such competitor by reason of its favorable position meet and even reduce such lower quotation. In certain instances the competitor may establish its destination prices on a point not that of its plant

location. But respondent is advised of such practice by its salesmen and its customers in the normal course of its business. In such case it makes its computation on the basis of such point rather than on the basis of its competitor's plant point. It shows, on information and belief, that this method of determining prices is in general use by other producers. It shows that such method is the result of the natural evolution of marketing methods over the period embraced in the history of the cement industry and is not the result of any combination, conspiracy or agreement whatsoever.

(d) On information and belief, it denies the matters set forth in subdivision (d) of Paragraph Five and it specifically denies that it has always quoted destination prices identical with the destination price theretofore quoted by all other respondents seeking business at a given destination point in the United States.

I. IDAHO* answers Paragraph Five of Count I as follows:

Paragraph Five: Answering Paragraph Five of Count I, respondent Idaho Portland Cement Company does not use the so-called Multiple Basing Point System. Its price is adjusted at times to meet probable competition and it has at no times refused to quote to any prospective customer F. O. B. its mill.

J. MONOLITH answers Paragraph Five of Count I as follows:

Paragraph Five: This respondent denies each and every allegation of Paragraph Five of the Complaint and avers that it has not employed, and does not now employ, the so-called multiple basing point system of pricing referred to and described in said Paragraph Five of the Complaint, or any basing point system of pricing whatsoever.

K. NORTHWESTERN answers Paragraph Five of Count I as follows:

Basing Point System.

Paragraph Five: This respondent denies each and every allegation contained in Paragraph V, and denies that it does now or has employed the so-called multiple basing point system of pricing referred to in said paragraph.

* Original answer.

L. OREGON answers Paragraph Five of Count I as follows:

Paragraph Five: This respondent denies each and every allegation of Paragraph Five of the Complaint and avers that for approximately eight years last past it has not employed and does not now employ the so-called multiple basing point system of pricing referred to and described in Paragraph Five of the Complaint.

M. PACIFIC answers Paragraph Five of Count I as follows:

III.

Answering the allegations contained in paragraph V of said Count I, this respondent denies that at any time or at all, either with respect to most of its sales or any of its sales or at all, it has cooperatively or otherwise employed what is known as the multiple point basing system of pricing.

Further answering the allegations contained in paragraph V, this respondent states that it is without knowledge as to any of said allegations which it has not herein specifically admitted or denied, and basing its denial upon such ground, denies the same, and each and every part thereof.

Further answering the allegations of said paragraph V, and particularly subparagraph (a) thereof, this respondent refers to the report relative to competitive conditions in the cement industry transmitted by the said Commission to Congress in response to Senate resolution No. 448 of the Seventy-first Congress, and printed in 1933 by order of the Senate (73rd Congress, 1st Session, Senate Document No. 71, p. 116), and to the findings of said Commission contained therein, in so far as the same apply to this respondent, and this respondent alleges that its acts and practices in the sale of cement in interstate commerce are and have been since the period under investigation and covered in said report the same as its acts and practices in the sale of cement in interstate commerce during the period under investigation and covered by said report and findings.

N. PENN-DIXIE answers Paragraph Five of Count I as follows:

5. Having denied any illegal combination as alleged in Paragraph Four thereof, this respondent denies each and every allegation contained in Paragraph Five thereof.

O. 'RIVERSIDE answers Paragraph Five of Count I as follows:

Paragraph Five: (a) It is without knowledge as to the facts, or any of them, in Paragraph Five alleged, except the following: It alleges that it does not employ or use the so-called multiple basing point system of pricing referred to in said Paragraph Five. It further alleges that the facts in this connection are well known to the Honorable Federal Trade Commission. In this connection, it alleges that in a report relative to competitive conditions in the cement industry, transmitted by the said Commission to Congress in response to Senate Resolution No. 448 of the Seventy-first Congress, and printed in 1933 by order of the Senate (Seventy-third Congress, First Session, Senate Document No. 71, page 115), the following statement and finding was set forth with reference to the so-called Southern California mills, to wit, the California Portland Cement Co., Southwestern Portland Cement Co., Monolith Portland Cement Co., and this respondent:

"Fixing prices by the basing-point method has been abandoned and prices are now fixed by price lists circulated among manufacturers and dealers showing the price to dealers at all delivery points."

The said Commission further stated and found in said report (Senate Document No. 71, page 37):

"The 69 basing points govern and control delivered price quotations throughout the United States, except in the arbitrary price areas and the Pacific Coast section, which has a different method of fixing prices."

The said Commission also stated and found in said report as to Northern California, speaking as of August 12, 1929 (Senate Document No. 71, page 127):

"This ended the basing-point method of determining delivered prices as it is understood and applied in the eastern part of the United States and substituted therefor the price-list method. It also resulted in the establishment of a uniform mill price for all mills, for use in computing prices for all delivery points not covered by the published price lists."

With reference to the said statements and findings embodied in said report, as hereinabove set forth, as regards the non-use of the so-called multiple basing point system in California, respondent alleges that the said statements were true at the time when said report was rendered in

1933, and that they are likewise a true description of conditions in such respect at the present time.

(b) It is without knowledge as to the facts, or any of them, alleged in subparagraph (b) of Paragraph Five, with reference to the so-called multiple basing point system. As alleged above, this respondent does not use or employ the so-called system. As to whether any of the other producing respondents use or employ the said system, this respondent is without knowledge except as to conditions upon the Pacific Coast, and, in that connection, it avers that it is informed and believes, and hence alleges, that the said multiple basing point system is not in use in the Pacific Coast area.

(c) Since, as above alleged, it does not use said so-called multiple basing point system of pricing, this respondent is without knowledge as to the facts, or any of them, alleged in said subparagraph (c).

(d) Likewise, and for the same reason specified in its answer to subparagraph (c) of said Paragraph Five, it is without knowledge as to the facts, or any of them, alleged in said subparagraph (d) of said paragraph.

P. SANTA CRUZ answers Paragraph Five of Count I as follows:

V.

Answering the allegations contained in Paragraph Five of the first count of the complaint, this respondent denies that at any time or times, or at all, it, either alone or with any other respondent or respondents, has employed cooperatively, or otherwise, or at all, the so-called multiple basing point system of pricing referred to in the complaint, or any basing point system of pricing whatsoever or at all. This respondent is without knowledge concerning the allegations in said Paragraph Five which it has not herein specifically admitted or specifically denied and therefore it denies such allegations and each of them.

Q. SOUTHWESTERN answers Paragraph Five of Count I as follows:

Paragraph Five: (a) This respondent denies that it has, in cooperation with other named respondents or anyone else, employed what is described in the complaint as a multiple basing point method of pricing. It admits that cement is generally sold at destination prices, but it denies that there is, or that this respondent is a party to any

mutual understanding, agreement or combination to sell cement at destination prices, or at any agreed prices, or in any particular manner. This respondent admits that at its several plants, at the three locations hereinbefore set out, it habitually, although not invariably, sells cement at destination prices. This respondent avers that its methods of sale and its methods of arriving at prices to be quoted vary materially at its three several plants.

This respondent admits that the destination price method of selling cement has been frequently referred to in the cement industry and elsewhere, including judicial opinions, as a multiple basing point method of pricing, and that many mills which have from time to time individually assumed to raise and lower prices, have been frequently referred to in the cement industry as basing points, but this respondent avers upon information and belief that any such basing points or mills are not determined by any joint or cooperative action or agreement; that they have no fixity, but vary from time to time; that they are not the result of any agreement, understanding or concerted action.

This respondent avers that it has been, and has deemed itself at all times free to make any price for, and sell cement in any manner it has chosen, and that it has been at all times free to constitute any one of its mills a basing point, if its geographical location and shipping and marketing facilities enabled it so to do, and it avers that every other producing respondent within its marketing area has been free so to do, and that it and the other producing respondents have, from time to time, so acted.

This respondent avers that the term "basing point", when applied to the cement industry, is not analogous to the basing point systems which have prevailed in other industries. It avers the fact to be that the use of basing points is a natural evolution, and not the creation or the result of any agreement on the part of cement producers.

Except as hereinabove set forth, this respondent denies each and every allegation of Paragraph Five, and subparagraphs (a), (b), (c) and (d) thereof.

R. SUPERIOR, INC. answers Paragraph Five of Count I as follows:

The Basing Point System.

Paragraph Five: Answering Paragraph Five of Count I of the complaint this respondent denies each and every

allegation therein contained, and in particular denies that it ever has employed or now employs the so-called multiple basing point system of pricing as referred to and described in said paragraph.

S. YOSEMITE answers Paragraph Five of Count I as follows:

V.

Answering the allegations contained in Paragraph Five of the first count of the complaint, this respondent denies that at any time or times, or at all, it, either alone or with any other respondent or respondents, has employed co-operatively, or otherwise, or at all the so-called multiple basing point system of pricing referred to in the complaint, or any basing point system of pricing whatsoever or at all.

This respondent is without knowledge concerning the allegations in said Paragraph Five which it has not herein specifically admitted or specifically denied and therefore it denies such allegations and each of them.

PARAGRAPH SIX OF COUNT ONE.

COMPLAINT.

How the System Operates.

Paragraph Six: The following are illustrative examples of many instances of identical bids received by various branches of the Federal Government from producing respondents.

One June 5, 1934, there were submitted to the War Department for use in the construction of a project for the United States at Fort Peck, Montana which required 600,000 barrels of cement, 10 identical bids of $2.7054 per barrel by 10 different producers variously located.

On June 12, 1935, there were submitted to the Department of Justice for use in construction of United States Industrial Reformatory at Chillicothe, Ohio, 14 identical bids by 14 different producers variously located, on an indefinite quantity of cement.

On July 25, 1935, there were submitted to the War Department for delivery at Kansas City, Mo., 3 identical bids

by 3 different producers variously located, on a quantity of 600,000 barrels of cement.

On September 6, 1935, there were submitted for use in the construction of the United States Northeastern Penitentiary at Lewisburg, Pa., requiring 264 barrels of cement, 15 identical bids by 15 different producers variously located.

On October 18, 1935, there were submitted to the War Department for delivery at Vicksburg, Miss., 17 identical bids by 17 different producers variously located, on a quantity of 57,000 barrels of cement:

On November 8, 1935, there were submitted to the Bureau of Supplies and Accounts, Navy Department, 18 identical bids by 18 different concerns variously located. (Quantity not known.)

On February 13, 1935, there were submitted to the War Department for use in construction for the United States at Eastport, Maine, on a project requiring 5,000 barrels of cement, 15 identical bids by 15 different producers variously located.

On March 27, 1936, there were submitted to the War Department at New York, N. Y., 16 identical bids by 16 different producers variously located, on a quantity of 16,000 barrels of cement.

On April 23, 1936, there were submitted to the War Department for delivery at Tucumcari, New Mexico, 11 identical bids by 11 different producers variously located, on a quantity of 6,000 bags of cement.

On June 22, 1936, there were submitted to the Department of Agriculture for use of the Soil Conservation Service, for delivery at Polkton, N. C., 12 identical bids by 12 different producers variously located, on a quantity of 400 barrels of cement.

On June 22, 1936, there were submitted to the same Department for use of the same Service at Greensboro, N. C., 12 identical bids by 12 different producers variously located, on the same quantity of cement.

On June 25, 1936, there were submitted to the Forestry Service of the Department of Agriculture for use at Tallahassee, Fla., 9 identical bids by 9 different producers variously located, on a quantity of 6,360 bags of cement.

On July 26, 1936, there were submitted to the War Department for delivery at West Point, N. Y., 17 identical

bids by 17 different producers variously located, on a quantity of 7,000 barrels of cement.

On September 8, 1936, there were submitted to the War Department for use by the United States at Fort George G. Meade, Md., requiring an indefinite quantity of cement, 15 identical bids by 15 different producers variously located.

On October 23, 1936, there were submitted to the War Department, for use of the United States at Fort Devers, Mass., requiring 225 barrels of cement, 7 identical bids by 7 different producers variously located.

The foregoing instances of uniformity in delivered prices under the said pricing system are typical of bids submitted to the Federal Government except for the fact that occasionally there are instances of price variation in bids made to branches of the Federal Government. In some of such instances, producing respondents have alleged that such price differences were made in error and have requested and have been granted permission to withdraw such bids. The foregoing examples, however, are alleged as actual instances and as typical of the uniformity of bids presented to the Federal Government as respects a majority of the volume of cement purchasers by the United States.

Likewise, private buyers as a rule encounter no variation in delivered prices as regards the great preponderance of sales made to them.

The degree of identity of quotations and delivered prices made pursuant to proposals and awards for delivery of cement to states and municipal and quasi-municipal corporations approximates the degree of identity of delivered prices to the various branches of the Federal Government. In the great majority of instances, state and local authorities receive bids entirely identical.

A great number of examples of responses to proposals issued by branches of state governments, counties and quasi-municipal corporations showing entire lack of competition in delivered prices on the part of producing respondents could be given. The following tabulation shows fourteen cases of identical bids actually received by a single branch of but one state government.

STATE HIGHWAY COMMISSION (Oklahoma)

Tabulation of Bids on Cement Purchased From January 1, 1936 to September 1, 1936

Date	Amount	Bidders	Destination	Price Bid	
1/6/36	450 Bbls.	Ash Grove Lime & Cement Co.	Boise City	3.03	1363.50
		Monarch Cement Company		3.03	1363.50
		Universal Atlas Cement Co.		3.03	1363.50
		Dewey Portland Cement Co.		3.03	1363.50
		Oklahoma Portland Cement Co.		3.03	1363.50
3/8/36	2250 Bbls.	Dewey Portland Cement Co.	Clayton	2.72	6120.00
		Universal Atlas Cement Co.		2.72	6120.00
		Monarch Cement Co.		2.72	6120.00
		Ash Grove Lime & Cement Co.		2.72	6120.00
		Consolidated Cement Co.		2.72	6120.00
		Oklahoma Portland Cement Co.		2.72	6120.00
3/12/36	132 Bbls. (in paper)	Oklahoma Portland Cement Co.	Waynoka	2.55	336.60
		Universal Atlas Cement Co.		2.55	336.60
		Monarch Cement Co.		2.55	336.60
		Lehigh Portland Cement Co.		2.55	336.60
		Ash Grove Lime & Cement Co.		2.55	336.60
	175 Bbls. (in paper)	Ash Grove Lime & Cement Co.	Perry	2.42	423.50
		Oklahoma Portland Cement Co.		2.42	423.50
		Monarch Cement Company		2.42	423.50

3/25/36	150 Bbls.	Dewey Portland Cement Co.	Alva	2.77	415.50
		Ash Grove Lime & Cement Co.		2.77	415.50
		Universal Atlas Cement Co.		2.77	415.50
		Oklahoma Portland Cement Co.		2.77	415.50
		Monarch Cement Co.		2.77	415.50
		Lehigh Portland Cement Co.		2.77	415.50
4/9/36	450 Bbls.	Ash Grove Lime & Cement Co.	Boise City	3.03	1363.50
		Monarch Cement Company		3.03	1363.50
		Dewey Portland Cement Co.		3.03	1363.50
		Oklahoma Portland Cement Co.		3.03	1363.50
		Consolidated Cement Co.		3.03	1363.50
4/10/36	390 Bbls.	Dewey Portland Cement Co.	Cyril	2.87	1119.30
		Oklahoma Portland Cement Co.		2.87	1119.30
		Monarch Cement Company		2.87	1119.30
		Ash Grove Lime & Cement Co.		2.87	1119.30
		Consolidated Cement Co.		2.87	1119.30
		Lehigh Portland Cement Co.		2.87	1119.30
4/18/36	132 Bbls.	Dewey Portland Cement Co.	Buffalo	2.86	377.52
		Ash Grove Lime & Cement Co.		2.86	377.52
		Oklahoma Portland Cement Co.		2.86	377.52
		Monarch Cement Co.		2.86	377.52
		Universal Atlas Cement Co.		2.86	377.52
		Consolidated Cement Co.		2.86	377.52

Date	Amount	Bidders	Destination	Price Bid	
4/18/36	900 Bbls.	Dewey Portland Cement Co.	Stilwell	2.71	2439.00
		Ash Grove Lime & Cement Co.		2.71	2439.00
		Oklahoma Portland Cement Co.		2.71	2439.00
		Monarch Cement Co.		2.71	2439.00
		Universal Atlas Cement Co.		2.71	2439.00
		Consolidated Cement Co.		2.71	2439.00
5/16/36	200 Bbls. (in paper)	Oklahoma Portland Cement Co.	Perry	2.42	484.00
		Dewey Portland Cement Co.		2.42	484.00
		Ash Grove Lime & Cement Co.		2.42	484.00
		Universal Atlas Cement Co.		2.42	484.00
		Monarch Cement Co.		2.42	484.00
6/20/36	750 Bbls.	Ash Grove Lime & Cement Co.	Boise City	3.03	2272.50
		Monarch Cement Co.		3.03	2272.50
		Dewey Portland Cement Co.		3.03	2272.50
		Oklahoma Portland Cement Co.		3.03	2272.50
		Universal Atlas Cement Co.		3.03	2272.50
7/1/36	132 Bbls.	Ash Grove Lime & Cement Co.	Buffalo	2.86	377.52
		Oklahoma Portland Cement Co.		2.86	377.52

7/8/36	350 Bbls.	Ash Grove Lime & Cement Co.	Apache	2.82	987.00
		Monarch Cement Company		2.82	987.00
		Oklahoma Portland Cement Co.		2.82	987.00
		Dewey Portland Cement Co.		2.82	987.00
		Universal Atlas Cement Co.		2.82	987.00
		Lehigh Portland Cement Co.		2.82	987.00
		Consolidated Cement Co.		2.82	987.00
8/22/36	900 Bbls.	Oklahoma Portland Cement Co.	Stilwell	2.71	2439.00
		Lehigh Portland Cement Co.		2.71	2439.00
		Ash Grove Lime & Cement Co.		2.71	2439.00
		Universal Atlas Cement Co.		2.71	2439.00
		Consolidated Cement Company		2.71	2439.00
		Dewey Portland Cement Co.		2.71	2439.00
		Monarch Cement Co.		2.71	2439.00
		Lone Star Cement Co.		2.71	2439.00

Note: All cement in cloth except as otherwise specified.

ANSWERS.

I. Answer of The Cement Institute.

THE CEMENT INSTITUTE answers Paragraph Six of Count I as follows:

Paragraph Six: These respondents state that they are without knowledge of the facts alleged and instances cited under the caption "How the System Operates", and they therefore deny each and every allegation of Paragraph Six.

II. First Form of Answer Used by Certain Producers.

The following companies use a similar form, with variations of substance as noted in the footnotes.

Ash Grove	Missouri
Castalia	Monarch
Consolidated	Monolith Midwest
Coplay	National
Cumberland	Nazareth
Dewey	Northwestern States
Edison	Pittsburgh
Florida	Signal Mountain
Georgia	Southern States
Giant	Southwestern
Green Bag W. Va.	Superior
Hawkeye	Trinity
Hermitage	Vulcanite
Keystone	Wabash
Lawrence	Whitehall
Medusa	

Paragraph Six: This respondent admits the substantial accuracy of the facts about its own bids[1] specifically referred to in Paragraph Six, in so far as those facts refer to the prospective purchaser, the opening date of bids, the destinations[2] and quantities of cement involved, and the

[1] SOUTHWESTERN substitutes "that on or about April 23, 1936, it submitted to the War Department for delivery at Newkirk, and not at Tucumcari, its bid" for "the substantial accuracy of the facts about its own bids".

[2] SOUTHWESTERN omitted "the destinations".

[3] EDISON omits "and the prices bid by this individual respondent".

prices bid by this individual respondent,[3] but it is without knowledge about other bids.[4]

This respondent denies that identical delivered prices[5] show a lack of competition.

Except as hereinabove set forth, this respondent denies each and every allegation of Paragraph Six.

III. Second form of Answer Used by Certain Producers.

The following companies use a similar form,* with variations of substance as noted in the footnotes:

Glens Falls	Lone Star
Hercules	Universal Atlas
Lehigh	

Paragraph Six: This respondent admits the substantial accuracy of the facts about its own bids specifically referred to in Paragraph Six, in so far as those facts refer to the prospective purchaser, the opening date of bids, the destinations and quantities of cement involved, and the prices bid by this individual respondent, but it is without knowledge about other bids.

This respondent admits that it has requested permission to withdraw a[1] bid submitted by it, whenever[2] the quotation through mistake, clerical error or otherwise[3] has[4] not accurately reflected[5] the intention of the bidder concerning its price, terms, or conditions of sale.[6]

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* EDISON adds "Respondents bids were those alleged as submitted on November 8, 1935; February 13, 1935 (actually 1936); July 26, 1936 (actually 1935); and October 23, 1936 (actually at Fort Devens, Mass.)."

MISSOURI omits the preceding paragraph and substitutes therefor the following:

"This respondent states that on October 18, 1935 it submitted a bid to the War Department on a quantity of 57,000 barrels of cement for delivery near Greenville, Mississippi, and this respondent further states that it is without knowledge concerning any other bids."

[3] EDISON inserts "(if there were such)".

* Note similarity of DIAMOND, PENN-DIXIE and WEST PENN answers, *supra*, the second paragraph being followed in all three of them.

[1] LEHIGH substitutes "one" for "a".

[2] LEHIGH substitutes "during the effective period of the N. R. A. Code, since" for "whenever".

[3] LEHIGH omits "or otherwise".

[4] LEHIGH substitutes "did" for "has".

[5] LEHIGH substitutes "reflect" for "reflected".

[6] LEHIGH substitutes "and violated the provisions of said code" for "terms, or conditions of sale".

This respondent denies that identical delivered prices show a lack of competition.

Except as hereinabove set forth, this respondent denies each and every allegation of Paragraph Six.

IV. Third Form of Answer Used by Certain Producers.

The following companies use a similar form:

Bessemer	Petoskey
Federal	Utah
Idaho[7]	Spokane
Kosmos	Wolverine
Peerless	

Paragraph Six: This respondent did not submit any of the bids referred to in Paragraph Six, and is without knowledge of any of the facts concerning such bids.[8]

This respondent denies that identical delivered prices show a lack of competition.

Except as hereinabove set forth, this respondent denies each and every allegation of Paragraph Six.

V. Fourth Form of Answer Used by Certain Producers.

The following companies use a similar form with variations of substance as noted in the footnotes:

Calaveras	Yosemite
Santa Cruz	

This respondent is without knowledge[1] concerning the allegations, or any of them, contained in Paragraph Six of the first count of the complaint[2] and therefore it denies the said allegations and each of them.

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[7] IDAHO amended answer.

[8] PEERLESS inserts the following paragraph:

"This respondent admits that it has requested permission to withdraw a bid submitted by it, whenever the quotation through mistake, clerical error or otherwise has not accurately reflected the intention of the bidder concerning its price, terms, or conditions of sale."

[1] CALAVERAS substitutes "knowledge of or as to" for "knowledge concerning".

[2] CALAVERAS omits remainder of sentence.

VI. The Joint Answer.

The joint answer of ARKANSAS, COLORADO, NEBRASKA, OKLAHOMA, THREE FORKS and UNION answers Paragraph Six of the complaint as follows:

Paragraph Six: The respondents, Colorado Portland Cement Company, Oklahoma Portland Cement Company, and Three Forks Portland Cement Company, admit the substantial accuracy of the facts about their own bids specifically referred to in Paragraph Six, in so far as those facts refer to the prospective purchaser, the opening date of bids, the destinations and quantities of cement involved, and the prices bid by this individual respondent, but they are without knowledge about other bids.

The other respondents did not submit any of the bids referred to in Paragraph Six, and are without knowledge of any of the facts concerning such bids.

These respondents deny that identical delivered prices show a lack of competition.

Except as hereinabove set forth, these respondents deny each and every allegation of Paragraph Six.

VII. Non-Uniform Answers.

A. AETNA answers Paragraph Six of Count I as follows:

How the System Operates.

Paragraph Six: This respondent is without knowledge of the examples and tabulation set forth in Paragraph Six of the Complaint. This respondent having rarely submitted bids to the Federal government or its branches is without knowledge concerning the allegations that the examples set forth in Paragraph Six are typical of such bids.

This respondent denies the remaining allegations contained in Paragraph Six of the Complaint, except that it admits that in some instances private buyers and states and municipal and quasi-municipal corporations receive uniform price quotations from producers of cement, but denies that this shows lack of competition between them.

B. ALPHA answers Paragraph VI of Count I as follows:

VI. Answering Paragraph Six of Count I, this respondent admits that it submitted bids on some of the jobs

enumerated in Paragraph Six in the complaint, but it was without knowledge as to any bids made by other respondents before the formal publication of the bids. This respondent denies that it has ever requested or been granted permission to withdraw bids submitted to the Federal Government. This respondent denies that identical delivered prices show a lack of competition.

Except as hereinabove set forth this respondent denies each and every allegation of Paragraph Six as applicable to this respondent.

C. BEAVER answers Paragraph Six of Count I as follows:

Paragraph Six: This respondent did not submit any of the bids referred to in Paragraph Six of the complaint and is without knowledge of any of the facts concerning such bids. This respondent admits that upon occasion or occasions when a quotation made by it, through mistake, clerical error or otherwise, failed to reflect accurately its intention as a bidder, it has requested permission to withdraw a bid submitted by it. This respondent is without knowledge of the other facts or matters pleaded in said Paragraph Six and therefore denies each and every allegation of said Paragraph Six, except the allegations thereof hereinbefore specifically admitted.

D. CALIFORNIA answers Paragraph Six of Count I as follows:

Paragraph Six: In view of the foregoing denials and averments, this answering respondent is without knowledge of any of the facts alleged or instances cited in Paragraph Six of Count I of the complaint, and it therefore denies each and every allegation of said Paragraph Six.

E. DIAMOND answers Paragraph Six of Count I as follows:

"How the System Operates".

Paragraph Six: This respondent is not familiar with, and does not know as to the facts with reference to the statements as to bids received at various places and for various purposes or with the tabulation of bids received. This respondent admits that it has requested permission to withdraw a bid submitted by it whenever the quotation through mistake, clerical error or otherwise has not accu-

rately reflected the intention of the bidder concerning its price, terms, or conditions of sale.

Respondent denies each and every allegation of paragraph Six except as above set forth.

F. GREEN BAG PA. answers Paragraph Six of Count I as follows:

Paragraph Six: This respondent admits that it filed a bid for cement with the Navy Department, Bureau of Supplies and Accounts, Washington, D. C. (bids opened on November 8, 1935), and that it submitted a bid to the Purchasing and Contracting offices of Fort George G. Meade, Maryland (bids opened on September 8, 1936), in an effort to secure the said business at a competitive price. Upon information and belief, respondent admits that in these two cases other bidders quoted similar prices.

This respondent denies that where it has quoted delivered prices identical with those of other cement manufacturers there has been a lack of competition between them.

Except as hereinabove set forth, this respondent is without knowledge of the facts alleged in Paragraph Six and therefore denies each and every allegation therein set forth.

G. HURON answers Paragraph Six of Count I as follows:

Paragraph Six: This respondent has no knowledge as to the matters set forth in Paragraph Six in respect to bids on quantities of cement at the following points and for the following purchases: Chillicothe, Ohio; Kansas City, Missouri; Lewisburg, Pennsylvania; Vicksburg, Mississippi, Bureau of Supplies and Accounts, Navy Department; Eastport, Maine; War Department, New York; Tucumcari, New Mexico; Polkton, North Carolina; Greensboro, North Carolina; Tallahassee, Florida; West Point, New York; Fort George G. Meade, Maryland; Fort Devers, Massachusetts. It therefore leaves complainant to its proof in respect thereto. As to the allegation with reference to bids on 600,000 barrels of cement for use at Fort Peck, Montana, this respondent admits on information and belief that ten identical bids were at one time submitted, each being $2.7054 per barrel; that it then made no bid for the reason that the specifications as to delivery were such as to prevent deliveries in accordance therewith by this respondent; it shows that thereafter said delivery specifica-

tions were modified and that the War Department purchased from this respondent said 600,000 barrels of cement at a price substantially less than the said bids of $2.7054 per barrel.

As to whether or not the instances of uniformity set forth in said Paragraph Six are typical of bids submitted to the Federal Government as is stated in said Paragraph Six, this respondent has no knowledge except on information and therefore leaves complainant to its proof. Nor has it any knowledge of whether any producing respondents have alleged that any price differences were made in error and have been granted permission to withdraw any bids. As to whether private buyers as a rule encounter any variation in delivered prices as regards the great preponderance of sales made to them, this respondent has no knowledge and therefore leaves complainant to its proof. It admits that the tendency of cement prices is towards uniformity; but it shows that the tendency of prices in any standardized commodity is, even in the freest competition, towards uniformity. It admits that it is informed that in some instances state and local authorities have received bids entirely identical, but as to whether or not this is so to a great majority of instances, as recited in said Paragraph Six, this respondent has no knowledge and leaves complainant to its proof.

As to whether or not a great number of examples of responses to proposals issued by branches of state governments, counties and quasi-municipal corporations showing entire lack of competition in delivered prices could be given, this respondent has no knowledge and therefore leaves complainant to its proof. As to the fourteen cases of identical bids received by a single branch of one state government set forth in the tabulation in said Paragraph Six, this respondent has no knowledge and in not one of said fourteen cases did it make a bid and therefore neither admits nor denies the same but leaves complainant to its proof.

H. IDAHO* answers Paragraph Six of Count I as follows:

VI.

Answering Paragraph Six of Count I, the respondent Idaho Portland Cement Company has no knowledge of any

* Original answer.

such identical bids being submitted in the trade area in which its business is conducted.

I. MONOLITH answers Paragraph Six of Count I as follows:

Paragraph Six: Having denied each and every allegation of Paragraphs Four and Five of the Complaint and having averred that this respondent has not employed, and does not now employ, the so-called multiple basing point system of pricing referred to and described in Paragraph Five of the Complaint, or any basing point system of pricing whatsoever, this respondent is without knowledge concerning the allegations, or any of them, contained in Paragraph Six of the Complaint and therefore denies each and every allegation of Paragraph Six of the Complaint.

J. NORTH AMERICAN answers Paragraph Six of Count I as follows:

Paragraph Six: This respondent admits that it submitted bids to various branches of the Federal Government upon the following projects set forth in Paragraph Six of the complaint:

On November 8, 1935, to the Bureau of Supplies and Accounts, Navy Department (but only for certain delivery points);

On March 27, 1936, to the War Department at New York, N. Y., on a quantity of 16,000 barrels of Portland cement;

On September 8, 1936, to the War Department for use by the United States at Fort George G. Meade, Md., covering 332 barrels of Portland cement;

On October 23, 1936, to the War Department for use of the United States at Fort Devens, Massachusetts, requiring 225 barrels of Portland cement.

This respondent denies that on February 13, 1935, it submitted a bid to the War Department for use in construction for the United States at Eastport, Maine, on a project requiring 5,000 barrels of cement, but such a bid covering 2,000 barrels of Portland cement and 3,000 barrels of high-early-strength Portland cement was submitted by it on February 13, 1936.

This respondent denies that on July 26, 1936, it submitted a bid to the War Department for delivery at West Point, N. Y., on a quantity of 7,000 barrels of Portland cement, but such a bid was submitted by it on July 26, 1935.

This respondent is without knowledge as to any bids which may have been submitted by other respondents to the Federal Government concerning these or other projects referred to in the complaint or to the State Highway Commission (Oklahoma) as referred to in the complaint.

This respondent denies that it requested or was granted permission to withdraw any of its aforesaid bids and is without knowledge regarding any withdrawals of the aforesaid bids of other companies.

As to any bids alleged to have been withdrawn by this respondent at other times or to other customers, this respondent requires strict proof of all of the allegations of Paragraph Six.

This respondent denies that identical delivered prices show a lack of competition. This respondent further denies that it cooperatively employed any method of pricing which resulted in any of its aforesaid bids being identical with those of any other bidder and further denies that it had any knowledge or information in advance of the submission of its own bids as to the terms of the bids which were or would be submitted by any other producer or producers.

This respondent further avers that the prevailing methods of marketing cement have not resulted in unreasonably high prices nor have they injured competitors or buyers or the public nor have they resulted in adequate earnings on the invested capital of this respondent.

Except as hereinabove set forth, this respondent denies each and every allegation of Paragraph Six.

K. NORTHWESTERN answers Paragraph Six of Count I as follows:

How the System Operates.

Paragraph Six: This respondent was not a party to any of the transactions set forth therein, and did not offer any bids on any of said projects and is without knowledge of the allegations contained in said Paragraph, and denies each and every allegation therein contained.

L. OREGON answers Paragraph Six of Count I as follows:

Paragraph Six: In view of the foregoing denials and averments, this respondent is without knowledge of the facts alleged and instances cited under the caption "How

the System Operates", and it therefore denies each and every allegation of Paragraph Six of the Complaint.

M. PACIFIC answers Paragraph Six of Count I as follows:

IV.

Answering the allegations contained in Paragraph VI of said Count I, this respondent alleges that it is without knowledge as to the same or any thereof, and basing its denial upon such ground, denies the same, and each and every part thereof.

N. PENN-DIXIE answers Paragraph Six of Count I as follows:

6. This respondent denies each and every allegation contained in Paragraph Six thereof, except that there are instances of price variation in bids made to branches of the Federal Government, and except that this respondent is without knowledge as to the truth of the allegations respecting the corporate respondents other than itself; and this respondent avers that, independent of any other producing respondent, it has submitted bids to various branches of the Federal Government for various projects, including certain of the projects referred to in the said Paragraph Six, and further avers that if it has on occasion requested, and been granted, permission to withdraw a bid submitted by it to any branch of the Federal Government, such request has been made because such bid, by reason of mistake, clerical error or otherwise, did not accurately reflect the intention of this respondent concerning its price, terms, conditions of sale or otherwise.

O. RIVERSIDE answers Paragraph Six of Count I as follows:

Paragraph Six: It is without knowledge as to the facts, or any of them, alleged in said Paragraph Six of said Count.

P. STANDARD answers Paragraph Six of Count I as follows:

Paragraph Six: This respondent has no knowledge of the facts averred in Paragraph Six of the complaint with reference to the various bids and proposals therein mentioned.

This respondent denies that identical delivered prices

show a lack of competition. It further denies each and every other allegation of Paragraph Six.

Q. SUPERIOR, INC. answers Paragraph Six of Count I as follows:

How the System Operates.

Paragraph Six: Answering Paragraph Six of Count I of the complaint, this respondent alleges that it did not furnish any bids for the furnishing of cement in connection with the construction of any of the projects set forth in said paragraph, and that it is without knowledge as to the allegations therein contained relating to the alleged instances of identical bids on said illustrative examples and therefore denies the same; that this respondent denies that it has ever made any application to withdraw any bid presented to the Federal Government or any department thereof or any state, county or municipal government or department thereof and that this respondent denies each and all of the other allegations contained in said Paragraph Six.

R. VOLUNTEER answers Paragraph Six of Count I as follows:

Paragraph Six: This respondent is without knowledge of the facts alleged in Paragraph Six concerning bids submitted to various branches of the Federal Government from producing respondents, except that this respondent knows and is content to admit that on or about June 22, 1936 it submitted a bid on a quantity of 400 barrels of cement for delivery at Polkton, North Carolina, and on or about the same date submitted at Greensboro, North Carolina, a bid on another 400 barrels of cement. When this respondent submitted these bids it was without knowledge as to any other bid which had been or would be submitted by other producing respondents. And this respondent denies that its said bids were identical with any other bids submitted by reason of any agreement or understanding with, or information from, such other producing respondents as submitted bids thereon.

This respondent, upon information and belief, states that some of the producing respondents have requested and have sometimes been granted permission to withdraw bids submitted to the Federal Government, but respondent is without knowledge of any such instances concerning other

bidders except during the effective period of the N.R.A. Cement Code. Pursuant to that Code all cement manufacturers were required to sell cement only at prices which had been filed and published, and when there was a deviation from such prices, no doubt this respondent and other producing respondents sought to avoid a violation of law by correcting bids to conform to the Code requirements.

This respondent admits that it may have sometime requested permission to withdraw a bid submitted by it whenever the quotation through mistake, clerical error or otherwise, had not accurately reflected the intention concerning its price, terms and conditions of sale, but it does not recall any such incident.

This respondent denies that identical delivered prices show a lack of competition.

Except as hereinabove set forth, this respondent denies each and every allegation of Paragraph Six.

S. WEST PENN answers Paragraph Six of Count I as follows:

This respondent did not submit any of the bids referred to in Paragraph Six, and is without knowledge of any of the facts concerning such bids.

This respondent admits that it has requested permission to withdraw a bid submitted by it, whenever the quotation through mistake, clerical error or otherwise has not accurately reflected the intention of the bidder concerning its price, terms, or conditions of sale.

This respondent denies that identical delivered prices show a lack of competition.

Except as hereinabove set forth, this respondent denies each and every allegation of Paragraph Six.

INTRODUCTION AND SUB-PARAGRAPH (a) OF PARAGRAPH SEVEN OF COUNT I.

COMPLAINT.

Methods for Making System Effective.

Paragraph Seven: In pursuance and in support of their combination averred in Paragraphs Four and Five hereof, respondents have used many and various means and have followed many practices including the following:

(a) Respondents have prepared and distributed among

producers, and from time to time amended, information as to all-rail rates of freight on cement. The said information, except interim amendments, is furnished in the form of rate books, one for each state throughout the country. Each state book shows the carload rate on cement from every basing point, whether within or outside the state, which governs or which under any reasonably possible change of base price or freight rate might govern any territory within the state, to all cities, towns and other points of reasonably possible destination within the state. This is done under the pretext of furnishing producers with information needed by them to the end that they may know what rate of freight applies to any given transaction. This, however, is not the true motive; the said freight rate information is furnished to the end that, irrespective of actual existing freight rates, all producing respondents shall reach precisely identical results in calculating that factor of the said formula which is measured by the rate of freight from the governing basing point to destination as described in Paragraph Five (c) hereof. The purpose is not accurate rate information but precisely uniform freight rate applications by all producers. Such purpose appears from these facts:

(1) If a modification of a rate is made effective at any time for cement, it is the understanding among respondents that none of them shall use the new rate for quoting delivered prices until it shall have been promulgated officially by respondents' freight rate information service. The freight rate books furnished by the Institute to producers rather than any revised official freight rate of the railroad is the freight rate effective for quotation purposes until all interested respondent producers have been officially notified of such change of rates. Thus, for the purpose of arriving at producing respondents' delivered prices the making of rates by the carriers and the supervision thereof by the Interstate Commerce Commission are nullities until the Institute shall have notified all interested producers. (Before such notification, however, the rates as modified from time to time are in force for purposes of computing the freight paid by producing respondents to the railroads as actual carriage charges.)

(2) These freight rate schedules are a matter of great complexity and intricacy. Since thousands of rates are given in each rate book, some errors arise. Producers

frequently prepare and maintain their own freight rate data; yet, if any producer deems any rate given by the Institute to be erroneous, or even if the same be in truth erroneous, it is the understanding of respondents that each will use, in computing delivered price quotations, the rate given in the Institute's rate book rather than the true railroad or Interstate Commerce Commission rate. The Institute's freight rate books are instruments for the maintenance of uniform delivered prices and not primarily of complete and accurate information. In cases where freight rates are reduced and in cases where the Institute's figures are erroneously too high, the better informed and more diligent producing respondents are restrained from making reduced delivered prices, as the result of respondents' understanding that for price quotation purposes the Institute's freight rate schedules, right or wrong, are to be used. This understanding constitutes a safeguard against pleas, whether genuine or spurious, on the part of any producers making any quotation below those submitted by their competitors, that they acted in harmony with formula rather than as intentional price cutters.

ANSWERS.

I. Answer of The Cement Institute.

THE CEMENT INSTITUTE answers the introduction and subparagraph (a) of Paragraph Seven of Count I as follows:

Paragraph Seven: These respondents, having denied any illegal combination, now deny that they have used any means of making effective any such combination.

(a) These respondents admit that The Cement Institute has prepared and distributed information in the form of freight rate books as to all-rail rates of freight on cement, compiled from the official tariffs. They deny that there is one such book for each State throughout the country. These respondents further deny that this information is furnished for any motive other than to supply producers, at relatively small expense, with accurate information in convenient form; they have no knowledge and therefore deny that there is any understanding among these respondents or any others that a new freight rate shall not be used until it shall have been promulgated through the Institute's

service; they have no knowledge and therefore deny that there is any understanding among producing respondents that Institute rates should be used in place of official rates.

The nature of said freight rate books is more fully set out in the Further Defense hereto.

Except as set forth hereinabove or in the Further Defense, these respondents deny each and every allegation of sub-paragraph (a) and Sections (1) and (2) of Paragraph Seven.

II. Form of Answer Used by Certain Producers.

The following companies use a similar form, with variations of substance as noted in the footnotes:

Alpha
Arkansas
Ash Grove
Bessemer
Castalia
Colorado
Consolidated
Coplay
Cumberland
Dewey
Edison
Federal
Florida
Georgia
Giant
Glens Falls
Green Bag W. Va.
Hawkeye
Hercules
Hermitage
Keystone
Kosmos
Lawrence
Lehigh
Lone Star
Medusa
Monarch
Monolith Midwest
National
Nazareth
Nebraska
Northwestern States
Oklahoma
Peerless
Petoskey
Pittsburgh
Utah
Signal Mountain
Southern States
Southwestern
Standard
Superior
Three Forks
Trinity
Union
Universal Atlas
Volunteer
Vulcanite
Wabash
West Penn
Whitehall
Wolverine

Paragraph Seven: This respondent, having denied any illegal combination,[1] now denies that it has used any means of making effective any such combination.[2]

(a) It admits that The Cement Institute has prepared and distributed information as to all-rail rates of freight on cement, compiled from the official[3] tariffs.[4] It states that this information consists of[5] actual freight rates between[6] points of actual shipments[7] and actual points of destination,[8] and that these rates are[9] the official carload rates on cement[10] expressed in cents per hundred pounds of cement. It admits that said information, except interim amendments, is furnished in the form of rate books, but it denies that there is one such book for each State throughout the country. It states that such books generally include all[11] destinations within the area covered by the respective books, and they[12] include the actual freight rates to such destinations from all[13] points of actual shipments located within the State or area covered by the respective books as well as from all[14] other points of actual shipments from which any appreciable amount of cement is shipped

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[1] ASH GROVE and EDISON omit "illegal".

EDISON inserts "illegal or otherwise".

STANDARD inserts "between it and any other respondent or respondents".

VOLUNTEER inserts "with any other producing respondent".

[2] STANDARD inserts "and it denies that it has followed any practice whatever in pursuance or in support of any illegal combination between it and any other respondent or respondents".

[3] CONSOLIDATED, FLORIDA, SIGNAL MOUNTAIN, and TRINITY insert "railroad".

[4] STANDARD inserts "prevailing within certain designated areas".

[5] VOLUNTEER substitutes "is intended to be the" for "consists of".

[6] STANDARD inserts "most".

[7] STANDARD inserts "of cement and many actual points".

VOLUNTEER substitutes "shipping points" for "points of actual shipments".

[8] STANDARD inserts "within such area".

[9] VOLUNTEER inserts "intended to be".

[10] STANDARD inserts "between such points".

[11] STANDARD substitutes "many points of destination" for "all destinations".

[12] VOLUNTEER inserts "are intended to".

[13] STANDARD substitutes "most" for "all".

[14] STANDARD substitutes "most" for "all".

to such destinations. This respondent further avers that such information has not been compiled or distributed concerning freight rates in the States of Washington, Oregon, California, Arizona, Nevada, Utah, Colorado, Wyoming, Montana, or Idaho.[15] It denies that this information is furnished for any motive other than to supply producers at relatively small expense with accurate information in convenient form;[16] it denies that it has any understanding with others that a new freight rate shall not be used[17] until it shall have been promulgated through the Institute's service; it denies that it has any understanding with others that Institute rates should be used in place of official rates.[18]

This respondent further avers that the nature of these

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[15] BESSEMER, GIANT, and KOSMOS omit the entire preceding sentence.

[16] STANDARD omits the two preceding sentences and substitutes:

"This respondent has no knowledge as to whether such information has been compiled or distributed concerning freight rates in all areas throughout the United States, and if not, to what areas such information has been confined. This respondent avers that the only motive for furnishing this information is to supply producers, at relatively small expense, with accurate information in convenient form, and it denies that such information is furnished for any other motive;".

[17] VOLUNTEER substitutes "it denies that there is any understanding between this respondent and any of the other producing respondents, that none of them shall use a new freight rate" for "it denies that it has any understanding with others that a new freight rate shall not be used".

[18] EDISON inserts:

"Avers that this respondent meets the destination price quoted by its competitors (however arrived at) in those instances where it does any business at all, and takes no part whatsoever in setting such price in any instance, being, as above alleged, always a follower, never a leader, so far as prices are concerned; avers that the information contained in said freight rate books does not determine the price quoted by this respondent but is merely a part of the fund of knowledge which this respondent uses in ascertaining the prices of its competitors in a given locality, in the manner hereinabove described."

SOUTHWESTERN inserts:

"It avers that it has in the past maintained, and does now maintain its own bureau and service for the purpose of ascertaining freight rates; that it has and does, from time to time, compare the rates arrived at by its own bureau with those in published rate books, and it invariably uses the rates finally determined by its own bureau."

STANDARD inserts:

"and it denies that the preparation or distribution of such freight rate books, or the receipt or use thereof by this respondent, was a means used or a practice followed in pursuance or in support of any illegal combination, understanding or agreement whatsoever between it and any other respondent or respondents."

VOLUNTEER inserts:

"Respondent avers that the only motive it has ever had in obtaining this information from the Institute was that it might have accurate

freight rate books, as well as the manner and motive of their preparation and distribution, are all substantially identical with the freight rate information service formerly rendered to its members by the Cement Manufacturers Protective Association, as described by the United States Supreme Court in *Cement Manufacturers Protective Ass'n* v. *United States*, 268 U. S. 588, 597. The description there given by the Court of the Association freight rate books—except for the applicable territory and the number of rates given—is a substantially accurate statement of the freight rate books distributed by The Cement Institute. In its opinion the Supreme Court had this to say about freight rate books:

"The custom in the cement trade of selling cement at a delivered price which includes the mill price, the price of bags and freight charges, was an established trade practice before the organization of the defendant association. * * * The freight rates contained in the freight rate book are compiled from the official tariffs and translated from the rate per ton of the official tariffs into the rate per barrel of 380 pounds, the unit for the sale of cement. Similar lists of freight rates embracing substantially the same subject-matter were prepared and used by individual manufacturers before the organization of the defendant association. The association freight rate book took the place of previous separate publications by individual manu-

information of the actual freight rates between shipping points at a relatively small expense.

In figuring the price for its cement delivered at destination, this respondent, for convenience and economy, customarily accepts as correct and uses the freight rate between certain basing points or points of actual shipment and a given destination as published in the Institute's rate book.

However, respondent occasionally finds that the freight rate, between two given points, published in the Institute's rate book differs from the official tariff rate between the same two points, published by the carriers, as interpreted and figured by respondent's Traffic Manager; and, in such instances, respondent, in figuring the price for its cement delivered at destination, uses that rate which it ascertains to be the official tariff rate published by the carriers as applicable between the point of destination and a basing point or the point of actual shipment.

Likewise, respondent undertakes to ascertain whenever any new freight rate is established by the carriers, and such new freight rate is used by respondent in quoting prices on its cement delivered at destination, without regard to whether such new freight rate has been furnished in the information distributed by the Institute."

facturers, with the consequent saving of money and increase of accuracy and a more thorough and continuous checking of rates. The basing points from which freight rates were calculated were not selected by the Association, but were the same as those appearing in prior books published by individuals before the publication of the Association freight rate book. The basing points are points of actual shipment from which the larger proportion of the cement in a given locality in which cement is manufactured is actually shipped. The rates published are the actual rates, omitting fractions of cents, between the basing points and actual points of delivery. * * * The freight rate book, therefore, not only enables the manufacturer to calculate a delivered price on the basis of his own mill price, which he determines, to points in the territory nearest in point of freight rate to his own mill, but it enables him also to determine at once the freight differential which he must offset in his mill price in order to compete with other manufacturers serving any other given territory."[19]

Except[20] as hereinabove set forth, this respondent denies each and every allegation of sub-paragraph (a) and Sections (1) and (2) of Paragraph Seven.

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[19] EDISON omits the entire preceding quotation and paragraph.

[20] ARKANSAS, ASH GROVE, COLORADO, HAWKEYE, MONOLITH MIDWEST, NEBRASKA, NORTHWESTERN STATES, OKLAHOMA, PEERLESS, PITTSBURGH—COLUMBIA, SOUTHWESTERN, THREE FORKS, UNION and UNIVERSAL ATLAS insert after the above quotation, in a new paragraph, "This respondent avers that it does not calculate its freight charges on the basis of information supplied by the Institute."

SOUTHWESTERN inserts a new paragraph after the quotation, as follows:

"This respondent avers that no rate books are published by The Cement Institute for the territory served by its Victorville plant; that it uses the Institute freight rate books at its Osborn plant, and to a slight extent at its El Paso plant, but always in subordination to the rates determined by its own bureau."

UNIVERSAL ATLAS inserts after the above quotation, in a new paragraph, the following:

"This respondent denies that at any time prior to November, 1936 it used said freight rate books prepared by The Cement Institute, but on the contrary alleges that prior to November, 1936 it published and used its own books of freight rates ascertained from the official railroad tariffs. This respondent alleges that this respondent's use of said freight rate books since November, 1936 has been only because the use thereof is the simplest and most economical way in which information of official railroad freight rates can be obtained by this respondent."

III. Non-Uniform Answers.

A. AETNA answers sub-paragraph (a) of Paragraph Seven of Count I as follows:

Methods for Making System Effective:

Paragraph Seven: This respondent denies the existence of any combination between it and the other respondents named in the Complaint, and in particular the combination alleged in Paragraphs Four and Five of the Complaint, and further, in answer to the allegations contained in Paragraph Seven of the Complaint, this respondent says:

(a) This respondent admits that it is furnished from time to time with rate books showing the car load rates on cement from various points of production to destinations located within the locality in which this respondent distributes its product, and that such rate books are from time to time amended. This respondent denies that such information is furnished to it in pursuance or in support of any combination, and in particular in pursuance or support of the combination alleged in Paragraphs Four and Five of the Complaint; and further denies that such information is applied by it in determining the price of its production in a majority of cases, but on the contrary, says that more than sixty per cent of its sales are at prices otherwise determined. This respondent denies the remaining allegations contained in section (a) of Paragraph Seven of the Complaint.

B. BEAVER answers sub-paragraph (a) of Paragraph Seven of Count I as follows:

Paragraph Seven: This respondent denies that it has used any of the means, and further denies that it has followed any of the practices set forth in Paragraph Seven of the complaint in support of any combination averred in Paragraphs Four or Five thereof. This respondent admits that The Cement Institute has distributed information as to freight rates on cement to certain of its members. Respondent denies that such information has been compiled or distributed concerning freight rates in any of the Western states to which the sale and distribution of the cement produced by this respondent is confined. This respondent is without information as to the truth or falsity of the other facts alleged in sub-paragraph (a), sub-sec-

tions (1) and (2) of Paragraph Seven of the complaint, and therefore denies each and every allegation thereof, except the allegations thereof hereinbefore specifically admitted.

C. CALAVERAS answers sub-paragraph (a) of Paragraph Seven of Count I as follows:

Paragraph Seven: For answer to the allegations contained in Paragraph Seven of Count I of said complaint, this respondent denies that in pursuance and in support, or in pursuance or in support, of any combination alleged in Paragraphs Four and Five of Count I of said complaint, or of any combination whatsoever or at all, it has used many and various, or many or various, or any means, and has or have followed many or any practices alleged in said Paragraph Seven, or any practice or practices whatsoever or at all.

(a) For answer to the allegations contained in sub-paragraph (a) of said Paragraph Seven, this respondent denies that it has prepared and distributed, or prepared or distributed, among producers or any of them, and from time to time, or at any time, amended or any information as to all-rail rates of freight, or any other rate or rates of freight, on cement; denies that at any time there has been furnished this respondent by any other respondent, in any form or manner whatsoever, amended or any information as to all-rail rates of freight, or any other rate or rates of freight, on cement; denies said alleged information, whether with or without interim or any amendments, is or has been furnished to or by this respondent in the form of rate books, or in any other form, or at all; denies that there has been furnished to or by this respondent, at any time or at all, one rate book, or any rate book or rate books whatsoever, for each state, or any state whatsoever or at all. This respondent alleges in this connection that it does not now use or employ, and that it never has used or employed, any freight rate book referred to in said sub-paragraph (a), and there is not now and never has been any freight rate book or other form of information as to all-rail rates of cement in or for any state or states in which this respondent produces or sells Portland cement.

(1) For answer to the allegations of subsection (1) of sub-paragraph (a) of said Paragraph Seven, this re-

spondent denies that if a modification of a rate is made effective at any time for cement, it is the understanding of this respondent with any other respondent or respondents that none of them shall use the new rate for quoting delivered prices until it shall have been promulgated officially by said respondents' freight rate service; denies that there is or ever has been any understanding between this respondent and any other respondent or respondents, or between this respondent and any person, firm or corporation whatsoever, in any manner or at all dealing or relating to the use, employment or application of any freight or any other rate; and in this connection this respondent alleges it does not now and never has had or used the alleged freight information service referred to in said Paragraph Seven.

(2) For answer to the allegations contained in subsection (2) of sub-paragraph (a) of said Paragraph Seven, this respondent denies that it now has or at any time has had any understanding with any other respondent or respondents that each or any will use, in computing delivered price quotations, or for any purpose whatsoever, the rate or any rate given in the Institute's rate book rather than the true railroad or Interstate Commerce Commission rate; and in this connection this respondent alleges that it does not have or use and never has had or used any rate book of said Institute, or of any other respondent hereto, for any purpose whatsoever or at all.

D. CALIFORNIA answers sub-paragraph (a) of Paragraph Seven of Count I as follows:

Paragraph Seven: This respondent denies that, either in pursuance of or in support of the alleged combination averred in Paragraphs Four and Five of Count I, or any combination, this respondent has, or that any of the other respondents to its knowledge has or have, used many, or various, or any, means, or has or have followed many, or any, practices, either as alleged in Paragraph Seven of Count I, or otherwise or at all. Denies that this respondent has used any of the various means, or has followed any of the practices, as alleged in Paragraph Seven of said Count I.

(a) With respect to the allegations of sub-paragraph (a) of said Paragraph Seven of Count I of the complaint, respondent further avers that, to the knowledge of re-

spondent, neither the Institute nor any of the respondents has prepared or distributed among any producers of cement any information as to all-rail rates of freight on cement for California or for shipments of cement to points from California or to points in any geographical areas in which respondent sells or ships any of its cement, either in the form of rate books, or otherwise, or at all. Respondent, in fixing and quoting delivered prices on cement manufactured by it, in so far as freight rates are a factor to be considered, has uniformly used, and uses, only the true, current freight rates in force at the time which are applicable to the shipment of said cement from its mill to the actual destination thereof, which true current freight rates it secures only from the official tariffs published by the railroad carriers. Denies that the official tariffs of the freight rates to points at which respondent ships or causes any of its cement to be shipped are a matter of great, or any, complexity or intricacy. Alleges that same are simple and well-known. Respondent, in fixing and quoting delivered prices on cement manufactured by it, has acted independently and without any agreement or understanding with any other producer or seller of cement. Denies that this respondent has been, or is, restrained from making reduced delivered prices, or any prices, for its cement as a result of any understanding or agreement with any other producer or producers or seller or sellers of cement.

E. DIAMOND answers sub-paragraph (a) of Paragraph Seven of Count I as follows:

"Methods for Making System Effective".

Paragraph Seven: Respondent denies that in pursuance and in support of their alleged combination as averred in paragraphs 4 and 5 of the complaint, the respondents have used many and various means and have followed many practices, including some stated, and avers the fact to be that this respondent has no combination with any of the other respondents named in the complaint for the making or maintaining of prices, or of interfering with, or hindering, lessening, restricting, or restraining, competition among cement producers.

This respondent admits that the cement Institute has prepared and distributed to its members information as to the existing all-rail rates of freight on cement from

the various plants and shipping points of the several producers in some but not all parts of the country in the form of rate books, which books show the carload rates on cement per one hundred pounds to various places and are compiled and furnished to members of the cement institute by it for the convenience of the members and because it can be so compiled and furnished much more cheaply than it could be done by the several manufacturers who would each be duplicating the work of the others with respect to its particular territory.

It denies that the true motive for the publication of said rate books is that the information is furnished to the end that irrespective of actual existing freight rates, all producing respondents shall reach precisely identical results in calculating that factor of the said formula which is measured by the rate of freight from the governing basing point to the destination, and says that the rates are given from all points of actual shipment of the producers shipping into a particular territory and not from basing points only and that to the best knowledge and belief of this respondent the rates so furnished are accurate and correct, and are the lowest rates in effect between the various points shown.

(1) Respondent denies that it is the understanding among respondents, that none of them shall use a new rate for quoting delivered prices until it shall have been promulgated officially by the freight rate service furnished by said Institute, and on the contrary says that this respondent uses the correct freight rate regardless of the source from which obtained, or whether the correct rate is shown in the book published by the Institute.

(2) This respondent admits that freight rate schedules are matters of great complexity and intricacy, and that errors sometimes occur, and it is advised that some producers prepare and maintain their own freight rate data, but respondent avers that such freight rate books are not so intricate and complex as the rate sheets as compiled by the railroad, and it says that the maintenance by the several producers of their own freight rate departments would involve large expense for each producer so maintaining its rate department and would be, and is, a needless and unnecessary expense. It denies that this respondent is party to any agreement or understanding that each respondent will use the rate given in the Institute rate

book, rather than the true railroad or interstate commerce commission rate, and it denies that there is any such understanding among the members of said Institute and this respondent.

It denies that the Institute's freight rate books are instruments for the maintenance of uniform delivered prices and not primarily complete and correct information and says that said freight rate service is substantially the same service as was formerly furnished its members by Cement Manufacturers Protective Association as described and approved in the case of Cement Manufacturers Protective Association v. United States, reported in 268 U. S. 588, 597, to which reference is made. It denies that in cases where freight rates are reduced and in cases where Institute's figures are erroneous or too high, the better informed and more diligent producing respondents are restrained from making reduced delivered prices as the result of respondents understanding that for price purposes the Institute's freight rate prices, right or wrong, are to be used, and says that there is no such understanding of this respondent with the Institute or other respondents.

F. GREEN BAG PA. answers sub-paragraph (a) of Paragraph Seven of Count I as follows:

Paragraph Seven: This respondent, having denied any combination, now denies that it has used any means of making effective any combination.

(a) Respondent has received from the Institute information as to all rail rates of freight in the form of freight books which show carload rates on cement. It states that such books generally include all destinations within the area covered and the actual freight rates to such destinations from all points of actual shipments located within the area covered as well as from all other points of actual shipments from which any appreciable amount of cement is shipped to such destinations. It denies that this information is received and used for any purpose other than to expedite freight rate computation; it denies that it has any understanding with others that a new freight rate shall not be used until it shall have been promulgated through the said Institute's service or not used in any other fashion; it denies that it has any understanding with others that the rate book rates should be used in place of official rates or in any other fashion.

Except as hereinabove set forth, this respondent denies each and every allegation of sub-paragraph (a) and sections (1) and (2) of Paragraph Seven.

G. HURON answers sub-paragraph (a) of Paragraph Seven of Count I as follows:

Paragraph Seven: It denies that in pursuance and in support of a combination as alleged in Paragraphs Four and Five of the complaint this respondent has used many and various means and has followed many practices. It denies that it has used the practices that are set forth in said Paragraph Seven or that it has used such practices in support of or by reason of any such combination.

(a) It admits that there has been prepared and distributed among the producers of cement information as to all-rail rates of freight on cement. It is furnished in the form of rate books but this respondent is advised that such book is not compiled for each state throughout the country. It admits that it has received said rate books for the states in which it is doing business. It admits that such books show freight rates on cement from the several shipping points which might be used in the computation of the rates and prices of cement to points within the state as to which such book is issued. It shows that said rates are computed on the basis of 100 pounds and not on the basis of barrels of cement. It denies that this is done under the pretext of furnishing producers with information needed by them to the end that they may know what rate of freight applies to any given destination. It denies that this is not the true motive. It states on information and belief that said freight rate information is furnished to it to the end that it may have a source of knowledge as to actual existing freight rates. It shows that it receives said books but, insofar as it uses them, it uses them only to assist in the determination of what are the actual existing freight rates to points of destination and from points of origin as listed in said books. It denies that it uses the information contained therein, in order that it can reach results identical with those reached by other producers of cement in calculating freight rates from any given point to any given point of destination. It denies that the purpose of the book is not to supply accurate freight information but to supply precisely uniform freight information to be applied by all producers.

It specifically shows that the book is not used by it for the purposes alleged in said subdivision (a). In this respect it shows that it maintains its own traffic department and that it obtains all railroad tariffs applicable to freight rates in the territory in which it does business; that it computes freight rates from these tariffs; that it checks the rates it so computes from time to time with the rates set forth in the books issued by said Cement Institute. It has found that generally the rate information contained in said books is accurate. Where this respondent has discovered that it is not accurate, it has not used the rates therein set forth but has used the rate as determined by its Traffic Department.

(a-1) As to the matters set forth in subdivision a-1, this respondent has no knowledge of any understanding among the respondents as therein set forth and therefore denies the same, but it shows that insofar as it itself is concerned, it has no such understanding with any other respondent and it shows that when a modification of a rate is made effective by railroad authority at any time, this respondent uses such modification in its computations, irrespective of whether or not it has been promulgated officially by the freight rate service of said Cement Institute. It denies therefore that rates made by carriers and approved by the Interstate Commerce Commission are nullities for the purpose of its destination prices of cement until the Cement Institute shall have notified it and other producers as to such rates. It shows that it uses the rates published and made effective by the carriers not only for the purpose of computing freight charges but also for the purpose of determining the destination prices wherever the factor of freight rates is a necessary factor in such determination.

(a-2) As to the matters set forth in subdivision a-2, this respondent admits that the freight rate schedules are a matter of great complexity and intricacy and that errors arise in the computation thereof. It admits that it prepares its own freight rate data but it denies that it has any understanding with the Institute or with any other producer that the rate given in the Institute rate book, even though it be erroneous, should be used in any respect rather than the true railroad rate published by the railroads and approved by the Interstate Commerce Commission. It denies that the Institute's freight rate books

are instruments for the maintenance of uniform delivered prices and not primarily of complete and accurate information. It denies that it has any understanding with the Institute or with any other producer that for price quotation purposes the Institute's freight rate schedules, right or wrong, are to be used. It shows that its practice is entirely to the contrary.

H. IDAHO in its original answer answers sub-paragraph (a) of Paragraph Seven of Count I as follows:

VII.

Answering Paragraph Seven of Count I:

Sub-section (a) The respondent Idaho Portland Cement Company has no knowledge of any rate book issued by the Cement Institute. This company uses only rates as quoted by the different railroad companies.

IDAHO in its Amended Answer answers sub-paragraph (a) of Paragraph Seven of Count I as follows:

Paragraph Seven: This respondent, having denied any illegal combination, now denies that it has used any means of making effective any such combination.

(a) This respondent has no knowledge of any rate book issued by The Cement Institute, and it avers that it does not calculate its freight charges on the basis of information supplied by the Institute.

I. MISSOURI answers sub-paragraph (a) of Paragraph Seven of Count I as follows:

Paragraph Seven: This respondent having denied any combination, now denies that it has used any means of making effective any such combination.

(a) This respondent admits that The Cement Institute has prepared and distributed information as to all-rail rates of freight on cement for destinations within its marketing area but this respondent avers that it does not nor has it ever calculated its freight charges on the basis of information supplied by the Institute.

This respondent denies that it is or ever has been a party to, or has any knowledge of, any understanding with others that a new freight rate shall not be used until it shall have been promulgated through the Institute service or that Institute rates should be used in place of official tariff rates.

Except as hereinabove set forth, this respondent denies each and every allegation of sub-paragraph (a) and Sections (1) and (2) of Paragraph Seven.

J. MONOLITH answers sub-paragraph (a) of Paragraph Seven of Count I as follows:

Paragraph Seven: Having denied each and every allegation of Paragraphs Four and Five of the Complaint and having averred that this respondent has not employed, and does not now employ, the so-called multiple basing point system of pricing referred to and described in Paragraph Five of the Complaint, or any basing point system of pricing whatsoever, this respondent is without knowledge of the facts alleged in Paragraph Seven of the Complaint and in each and every subparagraph and subsection thereof and therefore denies each and every allegation therein contained, and it further particularly denies that, even though it has not employed and does not now employ said or any basing point system of pricing, it, or any other respondent or respondents, or any others, has or have used any of the various means or has or have followed any of the various practices set forth in Paragraph Seven of the Complaint and in each subparagraph and subsection thereof, in pursuance and in support of the combination alleged in Paragraphs Four and Five of the Complaint, or any other combination.

(a) Answering the allegations contained in subparagraph (a) of said Paragraph Seven, this respondent avers that it does not now have or use or employ, and that it never has had or used or employed any freight rate book referred to in said subparagraph (a); that there is not and there never has been any freight rate book or other form of information as to all-rail rates of freight on cement in or for the states of Arizona, California, Nevada, Oregon or Washington; and that this respondent, either alone or in concert with any respondent or respondents, has not prepared or distributed, or furnished, or assisted, either directly or indirectly, in the preparation or distribution or furnishing of said alleged information as to all-rail rates of freight in the form of rate books, or in any form whatsoever, to any person, firm or corporation whatsoever in any state or states throughout or in the United States. Except as hereinabove expressly admitted, this respondent denies each and every allega-

tion of subparagraph (a) and subsections (1) and (2) of Paragraph Seven of the Complaint.

K. NORTH AMERICAN answers subparagraph (a) of Paragraph Seven of Count I as follows:

Paragraph Seven: This respondent denies each and every allegation of Paragraph Seven.

L. NORTHWESTERN answers sub-paragraph (a) of Paragraph Seven of Count I as follows:

Methods For Making System Effective.

Paragraph Seven: This respondent has already denied that it has employed or does now employ the so-called multiple basing point system of pricing, and is without knowledge of the allegations contained in Paragraph Seven, and therefore denies the same. Respondent further particularly denies that it alone, or it in combination with any other respondents or any other persons, has used any of the means or methods set forth in said Paragraph of the Complaint, and denies that it is now or has at any time been any part or party to any combination.

M. OREGON answers sub-paragraph (a) of Paragraph Seven of Count I as follows:

Paragraph Seven: Having denied each and every allegation of Paragraphs Four and Five of the Complaint and having averred that for approximately eight years last past this respondent has not employed and does not now employ the so-called multiple basing point system of pricing, this respondent is without knowledge of the facts alleged in Paragraph Seven of the Complaint and therefore denies each and every allegation thereof and it further particularly denies that, even though it does not employ said multiple basing point system of pricing, it, or any other producing respondent, or any of them and any other respondents, or any others, has used any of the various means or has followed any of the practices set forth in Paragraph Seven of the Complaint in pursuance and in support of the combination averred in Paragraphs Four and Five of the Complaint, or any other combination.

It further avers, in answer to Sub-Paragraph (a) (1) (2) of Paragraph Seven of the Complaint that the re-

spondent Institute has not compiled or distributed any information concerning freight rates for the States of Washington, Oregon, California, Arizona, Nevada, Idaho, Utah, Colorado, Montana or Wyoming.

N. PACIFIC answers sub-paragraph (a) of Paragraph Seven of Count I as follows:

V.

Answering the allegations contained in paragraph VII of said Count I, this respondent denies the present or past existence of the combination averred in paragraphs IV and V of said Count I, or any part thereof, or any combination, and referring to the practices alleged in said paragraph VII, this respondent denies the use by it now or in the past of any of the means or practices therein referred to, and more particularly admits, alleges, and denies as follows:

(a) Referring to the allegations contained in sub-paragraph (a) of paragraph VII and subparagraphs 1 and 2 thereof, this respondent denies each and every, all and singular, the allegations contained therein, and particularly denies that it has used or now uses the so-called rate books, or any thereof, either in the sale of said cement in interstate commerce or otherwise.

O. PENN-DIXIE answers sub-paragraph (a) of Paragraph Seven of Count I as follows:

7. Having denied any illegal combination as alleged in Paragraphs Four and Five thereof, this respondent denies each and every allegation contained in Paragraph Seven thereof.

P. RIVERSIDE answers sub-paragraph (a) of Paragraph Seven of Count I as follows:

Paragraph Seven: It is without knowledge as to the facts, or any of them, in Paragraph Seven alleged, except the following: It denies that, either in pursuance or in support of the or their combination averred in Paragraphs Four or Five of said Count, or of any combination, this respondent, or, to its knowledge, any respondent, has or have used many or various or any means, or has or have followed many or any practices, either including those alleged in said Paragraph Seven, or any of them, or any practices whatever.

(a) It alleges that it does not now have or use or employ, and it never has had or used or employed, a or any freight rate book, to which said freight rate books reference is made in subparagraph (a) of said Paragraph Seven. It further alleges that there is not, and there never has been, any rate book or other form of information as to freight rates in or for the States of California, Arizona or Nevada, or any of them, other than the public and published tariffs of the railroad companies over which this respondent's shipments are made. It denies that respondents, or any of them, have prepared or distributed to this respondent, or that they, or any of them, have from time to time amended, so far as this respondent is concerned, information as to all rail rates of freight on cement. Denies that said information, either excepting or including interim or any amendments, is or has been furnished this respondent in the form of rate books or otherwise, or at all, or for any state of the United States. It is without knowledge as to the form, contents, or information contained in "each state book," as the term is used in said subparagraph (a) of Paragraph Seven. It denies that the said freight rate books are furnished or supplied to this respondent under the pretext of furnishing it with information needed by it, to the end that it may know what rate of freight applies to any given transaction, or under any pretext, or at all. It is without knowledge as to the true motive underlying the supplying, furnishing, or amending of said rate books, but it is informed and believes and hence alleges that said rate books are furnished, supplied, and amended for the purpose of furnishing producers with information needed by them, to the end that they may know what rate of freight applies to a given transaction in order that they may be able to compete at a given market with other producers. Denies that the said freight rate information is furnished to the end that, irrespective of actual existing freight rates, this producing respondent shall reach precisely identical results with other producing respondents, or any of them, in calculating that factor of the said so-called basing-point formula which is measured by the rate of freight from the so-called governing basing point to destination, as alleged in Paragraph Five (c) hereof, or that said freight rate information is furnished this respondent at

all. It is without knowledge as to the purpose of furnishing, supplying, or amending said freight rate information, but it is informed and believes in this connection as is above alleged, and therefore denies that the purpose of the furnishing, supplying, or amending of said freight rate information appears from the facts set forth in subparagraphs (1) or (2) of said subparagraph (a) of said paragraph Seven, or from any thereof.

(1) It is without knowledge as to the facts, or any of them, in subparagraph (1) alleged except the following: It denies that if a modification of a rate is made effective at any time for cement, it is the understanding of this respondent with any respondent or respondents, that none of them shall use the new rate for quoting delivered prices until it shall have been promlugated officially by respondents' freight rate information service. It denies, in so far as this respondent is concerned, that there is any "respondents' freight rate information service."

(2) It is without knowledge as to the facts, or any of them, alleged in subparagraph (2) except the following: It is not the understanding of respondents, or any of them, and this respondent, nor is this respondent a party to any understanding, that it or any respondent or respondents each will use, in computing delivered price quotations, or otherwise, the or any rate given in the Institute's rate book rather than the true railroad or Interstate Commerce Commission rate. Alleges that in all rail shipments made by this respondent, the true railroad or Interstate Commerce Commission rate is invariably used, as evidenced by public and published tariff rates, and that in such cases its selling price is determined as alleged in Paragraph Eight hereof. It denies that this respondent is or ever has been restrained from making reduced delivered prices, or any prices, as the result of any understanding whatever with any other respondent or respondents herein.

Q. SANTA CRUZ answer sub-paragraph (a) of Paragraph Seven of Count I as follows:

VII.

Answering the allegations contained in Paragraph Seven of the first count of the complaint, this respondent denies that in pursuance and in support, or in pursuance or in support, of the combination averred in Paragraphs

Four and Five of the complaint, or of any combination whatsoever, or at all, it has been used many and various, or many or various, or any means and has followed or has followed many or any practices alleged in Paragraph Seven, or any practices whatsoever, or at all.

(a) Answering the allegations contained in subparagraph (a) of said Paragraph Seven, this respondent denies that it has prepared and distributed; or has prepared or distributed, among producers or any of them, and from time to time amended, or from time to time, or at any time, amended information as to all-rail rates of freight or any rate or rates of freight on cement; denies that said alleged information either excepting or including interim or any amendments, is or has been furnished to this respondent in the form of rate books or otherwise or at all; denies that there has been furnished at any time or at all to this respondent one rate book or any rate books whatsoever for each state, or for any state whatsoever throughout or in the country.

Further answering the allegations contained in said subparagraph (a) of said Paragraph Seven, this respondent alleges that it does not now have or use or employ, and that it never has had or used or employed any freight rate book referred to in said subparagraph (a); that there is not and there never has been any freight rate book or other form of information as to all-rail rates of freight on cement in or for the states of Arizona, California, Nevada, Oregon or Washington; and that this respondent, either alone or in concert with any respondent or respondents has not prepared or distributed, or furnished, or assisted either directly or indirectly in the preparation or distribution or furnishing of said alleged information as to all-rail rates of freight in the form of rate books, or in any form whatsoever to any person, firm or corporation whatsoever in any state of states throughout or in the United States.

(1) Answering the allegations contained in subdivision (1) of subparagraph (a) of said Paragraph Seven, this respondent denies that if a modification of a rate is made effective at any time for cement, it is the understanding of this respondent with any respondent or respondents that none of them shall use the new rate for quoting delivered prices until it shall have been promulgated officially by respondents' freight rate information service;

Further answering the allegations contained in said subdivision (1), this respondent alleges that it is not now and never has been a party to any understanding that it would not use a new or any freight or specific freight rate for quoting delivered or any price or prices until such rate should be promulgated officially or at all by what the complaint alleges is "respondents' freight rate information service", or should be promulgated by any other agency, person, firm, or corporation; that it is not now making use of and it has never made use of the alleged freight rate information service, and that as far as this respondent is concerned there is no "respondents' freight rate information service."

(2) Answering the allegations contained in subdivision (2) of subparagraph (a) of said Paragraph Seven, this respondent denies that it is or ever has been its understanding with any respondent or respondents that each or any of them will use in computing delivered price quotations the or any rate given in the Institute's rate book rather than the true railroad or Interstate Commerce Commission rate.

Further answering the allegations contained in said subdivision (2), this respondent alleges that it does not use and never has used the or any rate given in the Institute's rate books or any of them for any purpose whatsoever or at all.

R. SPOKANE answers sub-paragraph (a) of Paragraph Seven of Count I as follows:

Paragraph Seven: This respondent, having denied any illegal combination, now denies that it has used any means of making effective any such combination.

(a) It admits that The Cement Institute has prepared and distributed information in the form of freight rate books as to all-rail rates of freight on cement, compiled from the official tariffs, but is without knowledge or information concerning said freight rate books, except that such freight rate information has not been compiled or distributed concerning freight rates in the States of Washington, Oregon, California, Arizona, Nevada, Utah, Colorado, Wyoming, Montana, or Idaho.

This respondent avers that it does not calculate its freight charges on the basis of information supplied by the Institute.

Except as hereinabove set forth, this respondent denies each and every allegation of sub-paragraph (a) and Sections (1) and (2) of Paragraph Seven.

S. SUPERIOR, INC. answers sub-paragraph (a) of Paragraph Seven of Count I as follows:

Methods For Making System Effective.

Paragraph Seven: Answering Paragraph Seven of Count I this respondent alleges that none of the allegations therein contained apply to it, since, as it has already alleged, it never did and does not now employ the so-called multiple basing point system of pricing.

Answering sub-paragraph (a) this respondent denies that it has ever distributed information as to all-rail rates of freight on cement or freight books and also denies any knowledge of any rate books ever issued for the State of Washington and alleges that it is without knowledge as to whether rate books were issued for other states in the Union and therefore denies the same, and also denies that it has ever entered into any understanding with the other respondents or any of them or any other person or party to use any rates given in any Institute rate books rather than the true railroad or Interstate Commerce Commission rates, and also alleges that it is without knowledge as to the allegations contained in sub-paragraph 2 of sub-paragraph (a) and therefore denies the same.

T. YOSEMITE answers sub-paragraph (a) of Paragraph Seven of Count I as follows:

VII.

Answering the allegations contained in Paragraph Seven of the first count of the complaint, this respondent denies that in pursuance and in support, or in pursuance or in support, of the combination averred in Paragraphs Four and Five of the complaint, or of any combination whatsoever, or at all, it has used many and various, or many or various, or any means and has followed or has followed many or any practices alleged in Paragraph Seven, or any practices whatsoever, or at all.

(a) Answering the allegations contained in sub-paragraph (a) of said Paragraph Seven, this respondent denies that it has prepared and distributed, or has prepared

or distributed, among producers or any of them. and from time to time amended, or from time to time, or at any time, amended information as to all-rail rates of freight or any rate or rates of freight on cement; denies that said alleged information either excepting or including interim or any amendments, is or has been furnished to this respondent in the form of rate books or otherwise or at all, denies that there has been furnished at any time or at all to this respondent one rate book or any rate books whatsoever for each state, or for any state whatsoever throughout or in the county.

Further answering the allegations contained in said subparagraph (a) of said Paragraph Seven, this respondent alleges that it does not now have or use or employ, and that it never has had or used or employed any freight rate book referred to in said subparagraph (a); that there is not and there never has been any freight rate book or other form of information as to all-rail rates of freight on cement in or for the states of Arizona, California, Nevada, Oregon or Washington; and that this respondent, either alone or in concert with any respondent or respondents has not prepared or distributed, or furnished, or assisted either directly or indirectly in the preparation or distribution or furnishing of said alleged information as respondent denies that if a modification of a rate is made any form whatsoever to any person, firm or corporation whatsoever in any state or states throughout or in the United States.

(1) Answering the allegations contained in subdivision (1) of subparagraph (a) of said Paragraph Seven, this respondent denies that if a modification of a rates is made effective at any time for cement, it is the understanding of this respondent with any respondent or respondents that none of them shall use the new rate for quoting delivered prices until it shall have been promulgated officially by respondent's freight rate information service;

Further answering the allegations contained in said subdivision (1), this respondent alleges that it is not now and never has been a party to any understanding that it would not use a new or any freight or specific freight rate for quoting delivered or any price or prices until such rate should be promulgated officially or at all by what the complaint alleges is "respondents' freight rate information service", or should be promulgated by any

other agency, person, firm, or corporation; that it is not now making use of and it has never made use of the alleged freight rate information service, and that as far as this respondent is concerned there is no "respondents' freight rate information service."

(2) Answering the allegations contained in subdivision (2) of subparagraph (a) of said Paragraph Seven, this respondent denies that it is or ever has been its understanding with any respondent or respondents that each or any of them will use in computing delivered price quotations the or any rate given in the Institute's rate book rather than the true railroad or Interstate Commerce Commission rate.

Further answering the allegations contained in said subdivision (2), this respondent alleges that it does not use and never has used the or any rate given in the Institute's rate books or any of them for any purpose whatsoever or at all.

SUB-PARAGRAH (B) of PARAGRAPH SEVEN OF COUNT I.

(b) Customers have frequently demanded the privilege of buying at the point of production and delivering to destination by truck. This has long been regarded by respondents as a menace to said pricing system because it constituted an element of uncertainty tending to create price competition and to weaken the combination described in Paragraph Four and Five hereof. At one time said pricing system broke down, largely as a result of such use of trucks. The respondents, accordingly have resorted to various means to prevent the use by customers of trucks for delivery. Among these means, has been a concerted effort in certain parts of the county to charge customers requiring delivery to trucks 15c per barrel more than producing respondents charge to customers who obtain delivery by rail. At other times, respondents have attempted, with varying success, cooperatively to forbid entirely the loading of cement on trucks furnished by customers. The result of these concerted efforts, so far as successful, has been to eliminate an important source of competition in delivered prices and to prevent savings in cost to consumers buying direct and to those who buy from middlemen.

ANSWERS.

I. Answer of the Cement Institute.

THE CEMENT INSTITUTE answers sub-paragraph (b) of Paragraph Seven of Count I as follows:

(b) These respondents deny each and every allegation of sub-paragraph (b) of Paragraph Seven.

II. Form of Answer Used by Certain Producers.

The following companies use a similar form, with variations of substance as noted in the footnotes:

Alpha
Arkansas
Ash Grove
Bessemer
Castalia
Colorado
Consoliated
Coplay
Cumberland
Dewey
Federal
Florida
Georgia
Giant
Glens Falls
Green Bag Pa.
Green Bag W. Va.
Hawkeye
Hercules
Hermitage
Idaho*
Keystone
Kosmos
Lawrence
Lehigh
Lone Star
Medusa
Monarch
Monolith Midwest
National
Nazareth
Nebraska
Northwestern States
Oklahoma
Peerless
Petoskey
Pittsburgh
Utah
Signal Mountain
Southern States
Spokane
Superior
Three Forks
Trinity
Union
Universal Atlas
Vulcanite
Wabash
West Penn
Whitehall
Wolverine

* IDAHO, amended answer.

(b) This respondent admits that customers have sometimes demanded[1] the privilege of buying cement at the point of production and delivering it[2] to destination by truck.[3] It avers that it has individually adopted a sales

Except as hereinabove set forth, this respondent denies each and every allegation of sub-paragraph (b) of Paragraph Seven.

III. Non-Uniform Answers.

A. AETNA answers sub-paragraph (b) of Paragraph Seven of Count I as follows:

(b) This respondent denies the allegations contained in section (b) of Paragraph Seven of the Complaint.

B. BEAVER answers sub-paragraph (b) of Paragraph Seven as follows:

Answering the allegations of sub-paragraph (b) respondent admits that its customers at times demand the privilege of buying cement at the point of production. Respondent denies that it charges its customers requiring delivery to trucks fifteen cents per barrel more than it charges its customers who obtain delivery by rail. This respondent denies that acting alone or in combination with or under agreement with any other producer or any others it has attempted to prevent entirely the loading of cement on trucks furnished by its customers. Respondent is without knowledge of other facts and matters in sub-paragraph (b) and therefore denies each and every livery.[6]

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[1] GREEN BAG PA. substitutes "requested" for "demanded."

[2] GREEN BAG PA. substitutes "transported it themselves" for "delivering it."

[3] GREEN BAG PA. inserts "and that it has adopted the sales policy for refusing the sale of cement at the point of production for truck delivery."

policy[4] with regard to[5] the sale of cement for truck de-

[4] ALPHA substitutes "special sales policies" for "a sales policy."

LEHIGH substitutes "sales policies" for "a sales policy."

[5] IDAHO in its amended answer substitutes "which allows" for "with regard to."

[6] ALPHA inserts ", that such sales policies of this respondent have varied in different regions of the country, and that such sales policies have differed from time to time."

GREEN BAG PA. omits this sentence.

allegation thereof, except the allegations thereof hereinbefore specifically admitted.

C. CALAVERAS answers sub-paragraph (b) of Paragraph Seven as follows:

(b) For answer to the allegations contained in sub-paragraph (b) of said Paragraph Seven, this respondent denies that it has resorted to various or any means at all to prevent the use by customers of trucks for delivery; denies that among such alleged means, or otherwise or at all, there has been a concerted or any effort in certain parts, or any part, of the country by this respondent, along or with any other respondent or respondents, to charge customers requiring delivery by trucks 15¢ per barrel, or any sum whatsoever, more than producing respondents, or any of them, charge to customers who obtain delivery by rail; denies that at other times, or at any time or at all, this respondent, alone or with any other respondent, has attempted with varying success, or has attempted cooperatively or at all, to forbid entirely or at all the loading of cement on trucks furnished by customers.

D. CALIFORNIA answers sub-paragraph (b) of Paragraph Seven of Count I as follows:

(b) With respect to the allegations of sub-paragraph (b) of said Paragraph Seven of Count I of the complaint, this respondent admits that customers have from time to time demanded the privilege of buying cement at the point of production and delivering to destination by truck. It has been, and is, the practice with this respondent to deliver cement manufactured by it to customers at its mill at a price f. o. b. mill or its equivalent, and to permit such customers to deliver the same to destination by truck. Denies that this practice by respondent has been, or is, regarded by respondent as a menace to the alleged pricing system referred to in the complaint, either because it constituted an element of uncertainty tending to create price competition or to weaken the alleged combination referred to in Paragraphs Four and Five of said Count I. Denies that this respondent has resorted to various, or any, means to prevent, or that it has prohibited, any customers to whom it sells cement from purchasing such cement at respondent's mill and shipping same to destination by truck, or that respondent has, cooperatively

or otherwise, attempted so to do. Denies that this respondent has been, or is now, a party to a concerted, or any, effort to charge customers requiring delivery to trucks fifteen cents, or any other amount, per barrel more than respondent charges to customers who obtain delivery by rail. Denies that it has attempted, at any time, with varying success or otherwise, cooperatively or otherwise, to forbid entirely the loading of cement on trucks furnished by customers. Denies that, as a result of anything alleged in said sub-paragraph (b) of said Paragraph Seven or otherwise, there has been any elimination of an important, or any, source of competition in delivered prices of cement at any of the points at which this respondent has made sales of cement at delivered prices, or that there has been any prevention of savings in cost to consumers buying direct or those who buy from middlemen. Respondent has no knowledge of the other matters alleged in said sub-paragraph (b), and upon that ground denies each and every of the allegations thereof.

E. DIAMOND answers sub-paragraph (b) of Paragraph Seven of Count I as follows:

(b) With respect to paragraph B, this respondent admits that customers have on occasion requested the privilege of buying at the point of production and of delivering cement to its destination by truck.

It denies that at one time said pricing system broke down largely as a result of such use of trucks and avers that insofar as this respondent knows, there has been no such pricing system and says that when, as during the years 1931, 1932 and 1933 the price of cement broke down, it broke not because of the use of trucks, but because of the limited demand for cement and the effort of various producers to stay on the market, even at then present losses. This respondent does not know, and therefore denies, that the respondents have resorted to various means to prevent the use by customers of trucks for delivery, and it denies, because of lack of knowledge, that among these means has been a concerted effort in certain parts of the country to charge customers requiring delivery to trucks, fifteen cents per barrel more than producing respondents charge to customers who obtain delivery by rail.

It admits that this respondent has forbidden the loading of cement on trucks furnished by customers, but says

that such action was not recommended or advised by, or participated in by the Institute.

F. EDISON answers sub-paragraph (b) of Paragraph Seven of Count I as follows:

(b) This respondent avers that for many years it has uniformly refused to sell cement for delivery to customers' trucks at its mill; but denies that it has entered into any agreement, understanding or combination with any other producer or any other person so to refuse; and avers that this respondent is free, and always has been free, to resume such sales and deliveries if it at any time so elects; further avers that the reason for this respondent's refusal is twofold: (1) because the additional cost and inconvenience of such sales and deliveries more than offset any gains therefrom, particularly since experience has shown that such sales replace and are not in addition to sales in the normal course of business, and (2) especially because this respondent's dealers, upon whose trade respondent is principally dependent, resent as unfair, rightly or wrongly, sales for truck delivery, and, as individuals but none the less effectively, express their resentment by refusing to purchase cement from producers making such deliveries in their respective localities, with the result that this respondent has lost and would lose more sales than it could possibly gain by such deliveries.

Except as hereinabove set forth, this respondent denies each and every allegation of sub-paragraph (b) of Paragraph Seven.

G. HURON answers sub-paragraph (b) of Paragraph Seven of Count I as follows:

(b) It admits that customers have demanded the privilege of buying at its point of production and at its various plants and of themselves making the delivery to destination by truck or otherwise. It shows that it has accorded that privilege to buyers at its several plants. As to whether or not this has been regarded by any respondents as a menace to said pricing system as alleged in said subdivision (b), it neither admits nor denies but leaves complainant to its proof. Likewise, it neither admits nor denies that the pricing system broke down largely as a result of the use of trucks. It denies that it has resorted to various means to prevent the use of

trucks to customers, but it shows that, on the contrary, it makes delivery by trucks of a very substantial part of the cement sold by it at its various plants. It shows that it offers the option to purchasers to take delivery by truck or by rail. It denies that it charges any customers requiring delivery by trucks 15 cents per barrel more than it charges customers who obtain delivery by rail. As to such practice by all other respondents, this respondent has not sufficient knowledge and therefore leaves the complainant to its proof. But it shows that a substantial number of other producers, respondents herein, use trucks for the delivery of cement in the principal cities on the Great Lakes where are situate plants of this respondent. It denies that it has ever attempted cooperatively to forbid the loading of cement on trucks furnished by the customers. As to the attempts by other respondents, it has no knowledge and therefore leaves complainant to its proof. It denies that it has ever participated in any such concerted efforts, if they have in fact been made, and it denies that its practice with respect to said truck deliveries has eliminated any source of competition in destination prices.

H. IDAHO* answers sub-paragraph (b) of Paragraph Seven of Count I as follows:

Answering sub-section (b) of Pragraph Seven, the respondent Idaho Portland Cement Company has never specified that cement be delivered in any certain manner, nor has this company assessed any penalty against any form of transportation.

I. MISSOURI answers subparagraph (b) of Paragraph (b). This respondent denies each and every allegation of sub-paragraph (b) of Paragraph Seven as follows:

J. MONOLITH answers subparagraph (b) of Paragraph Seven as follows:

(b) This respondent denies each and every allegation of subparagraph (b) of Paragraph Seven of the Complaint.

K. NORTH AMERICAN answers sub-paragraph (b) of Paragraph Seven of Count I as follows:

Paragraph Seven: This respondent denies each and every allegation of Paragraph Seven.

* Original answer.

L. NORTHWESTERN does not specifically answer subparagraph (b) of Paragraph Seven of Count I, except in so far as it is covered by the following language:

This respondent further denies each and every allegation contained in Paragraph Seven and each subparagraph thereof, except as hereinbefore admitted or otherwise specially pleaded.

M. OREGON answers sub-paragraph (b) of Paragraph Seven of Count I, as follows:

Except as hereinbefore set forth, this respondent denies each and every allegation of Paragraph Seven and of each sub-paragraph and sub-section thereof.

N. PACIFIC answers sub-paragraph (b) of Paragraph Seven of Count I as follows:

(b) Answering the allegations contained in subparagraph (b), this respondent denies each and every, all and singular, the allegations contained therein, and particularly denies that this respondent has long regarded or has ever regarded the matter of sales for truck delivery as a menace to said or any pricing system, either because it constituted or constitutes an element of uncertainty tending to create price competition or to weaken the alleged combination referred to in Paragraphs IV and V of said Count I, or otherwise, or at all, and denies that at any time said or any price system broke down largely as the result of said use of trucks, and denies that there is or ever was, as to this respondent, any such price system as is alleged in said Count I, or any part thereof, which could be so or at all broken down, and denies that this respondent has resorted to various or any means to prevent the use by customers of trucks for delivery or otherwise, and denies that it has ever charged or is now charging 15 cents or any differential per barrel, or any other differential, for delivery to trucks, and denies that it has cooperatively or otherwise forbidden or is now forbidding entirely or otherwise the loading of cement on trucks furnished by customers or otherwise or at all.

O. PENN-DIXIE answers sub-paragraph (b) of Paragraph Seven of Count I as follows:

7. Having denied any illegal combination as alleged in Paragraphs Four and Five thereof, this respondent denies each and every allegation contained in Paragraph Seven thereof.

P. RIVERSIDE answers sub-paragraph (b) of Paragraph Seven of Count I as follows:

(b) It alleges that it is without knowledge as to the facts, or any of them, in said subparagraph (b) alleged except the following: It admits that customers have frequently, or from time to time, demanded or requested the privilege of buying at the point of production and delivering to destination by truck. It has long been the practice of this respondent, and it is now the practice of this respondent, to deliver such customers at a price f.o.b. mill, or its equivalent. This fact is well known to the Honorable Federal Trade Commission. In this connection, reference is again had to Senate Document No. 71 hereinabove referred to, where it is stated at page 117 thereof: "Riverside Cement Co. issued a circular letter to southern California dealers dated October 15, 1929, and a price list dated October 16, in which it was stated 'The price for loading on dealers trucks at Crestmore is for any quantity no matter how small and is universally 47½% per sack in cloth.'"

Denies that the matter of sales for truck delivery has long been regarded by this respondent, or that it is at all regarded by this respondent, as a menace to said or any pricing system, either because it constituted or constitutes an element of uncertainty tending to create price competition or to weaken the alleged combination referred to in Paragraphs Four and Five hereof, or otherwise or at all. It denies that it has resorted to various or any means to prevent the use by customers of trucks for delivery. It denies that it has ever been, or that it is now, a party to a concerted or any effort to charge customers requiring delivery to trucks 15c, or any sum, per barrel more than producing respondents, or any of them, or this respondent charge customers who obtain delivery by rail. It denies that it has attempted to any time, either with varying success or otherwise, or cooperatively or at all, to forbid entirely the loading of cement on trucks furnished bq customers.

Q. SANTA CRUZ answers sub-paragraph (b) of Paragraph Seven of Count I as follows:

(b) Answering the allegations contained in sub-paragraph (b) of said Paragraph Seven, this respondent denies that it has resorted to various or any means to pre-

vent the use by customers, or any of them, of trucks for delivery; denies that among such alleged means or otherwise or at all there has been a concerted or other effort in certain or any parts or any part of the country, by this respondent alone or with any other respondent or respondents, to charge customers requiring delivery to trucks 15c per barrel or any sum whatsoever more than producing respondents, or any of them, charge to customers who obtain delivery by rail; denies that at other times or at any time or at all this respondent alone or with any other respondent or respondents has attempted, with varying success or at all, cooperatively or at all, to forbid entirely or at all the loading of cement on trucks furnished by customers.

R. SOUTHWESTERN answers sub-paragraph (b) of Paragraph Seven as follows:

(b) This respondent admits that customers have sometimes demanded the privilege of buying cement at the point of production and delivering it at destination by truck. It avers that it has, individually, adopted a special sales policy with regard to the sale of cement for truck delivery at its plants at El Paso, Texas, and Victorville, California, to meet competition in the areas served by these two mills, and that its sales policy with reference to the mater of truck delivery has varied from time to time and place to place; that its plants at El Paso and Osborn, Ohio, were constructed for rail loading, and that loading by truck is a departure from its normal system of loading and increases the expense of such operation, and is therefore discouraged at its El Paso plant and its Osborn plant, unless it is found necessary in order to meet competition.

Except as hereinabove set forth, this respondent denies each and every allegation of sub-paragraph (b) of Paragraph Seven of the complaint.

S. STANDARD answers sub-paragraph (b) of Paragraph Seven of Count I as follows:

(b) This respondent admits that customers have sometimes requested the privilege of buying cement at its said mill and of delivering it to destination by truck, and that it has made a considerable number of such sales. This respondent avers that from time to time it has individually adopted sales policies with regard to the sale of

cement for truck delivery. Such sales policies have been adopted by this respondent without any arrangement, agreement, understanding or concerted action between it and other producing respondents, and for the sole purpose of meeting competition at the various destination points within its marketing area.

Except as hereinabove set forth, this respondent denies each and every allegation of sub-paragraph (b) of Paragraph Seven.

T. SUPERIOR, INC. answers sub-paragraph (b) of Paragraph Seven of Count I as follows:

Answering sub-paragraph (b) this respondent admits that it makes most of its deliveries by railroad or water rather than by truck because it has no available room or facilities for extensive truck loading operations and it would be excessively inconvenient and expensive, necessitating the installation of new loading platforms, storage facilities and other equipment and improvements to make substantial deliveries by truck, and denies each and all of the other allegations contained in said sub-paragraph.

U. VOLUNTEER answers sub-paragraph (b) of Paragraph Seven of Count I as follows:

(b) This respondent admits that customers have sometimes demanded the privilege of buying cement at the respondent's mill and delivering it to destination by truck. In a few instances respondent has made sales of its cement for delivery at its mill into trucks which carried it to customer's destination, but respondent avers that such sales were out of line with the sales policy which it had adopted individually and independently of other producing respondents with regard to the sale of cement for truck delivery. The sales policy so adopted by this respondent is opposed to the sale of cement at its mill for truck delivery because the making of deliveries to trucks at its mill interferes with the loading of its cement into cars for transportation by rail in carload lots and increases its costs.

Respondent further avers that with regard to the sale of cement for truck delivery its sales policy and the sales policies of the other producing respondents have differed from each other; that they have varied in different sec-

tions of the country, and that the sales policy of each producing respondent has differed from time to time.

Except as hereinabove set forth, this respondent denies each and every allegation of subparagraph (b) of Paragraph Seven.

V. YOSEMITE answers sub-paragraph (b) of Paragraph Seven of Count I as follows:

(b) Answering the allegations contained in subparagraph (b) of said Paragraph Seven, this respondent denies that it has resorted to various or any means to prevent the use by customers, or any of them, of trucks for delivery; denies that among such alleged means or otherwise or at all three has been a concerted or other effort in certain or any parts or any part of the country, by this respondent alone or with any other respondent or respondents, to charge customers requiring delivery to trucks 15c per barrel or any sum whatsoever more than producing respondents, or any of them, charge to customers who obtain delivery by rail; denies that at other times or at any time or at all this respondent alone or with any other respondent or respondents has attempted, with varying success or at all, cooperatively or at all, to forbid entirely or at all the loading of cement on trucks furnished by customers.

SUBPARAGRAPH (c) OF PARAGRAPH SEVEN OF COUNT I.

COMPLAINT.

(c) Among the possible means whereby the said pricing system may be impaired or broken is the diversion of shipments of cement in transit from the anticipated destination to a destination where the price is higher. This amounts to a concession in delivered price in favor of the transferee. Respondents have taken cooperative measures by the use of provisions in their contract forms in order to eliminate such diversions in transit. This tends toward the maintenance of concerted delivered prices.

ANSWERS.

I. Form of Answer Used by The Cement Institute and Certain Producers.

THE CEMENT INSTITUTE and the following companies use a similar form, with variations of substance as noted in the footnotes:

Aetna
Alpha
Arkansas
Ash Grove
Bessemer
Castalia
Colorado
Consolidated
Coplay
Cumberland
Dewey
Edison
Federal
Florida
Georgia
Giant
Glens Falls
Green Bag Pa.
Green Bag W. Va.
Hawkeye
Hercules
Idaho*
Keystone
Kosmos
Lawrence
Lehigh
Lone Star.
Medusa
Missouri
Monarch
Monolith
Monolith Midwest
National
Nazareth
Nebraska
Northwestern States
Oklahoma
Peerless
Petoskey
Pittsburgh
Utah
Signal Mountain
Southern States
Southwestern
Spokane
Standard
Superior
Three Forks
Trinity
Union
Universal Atlas
Volunteer
Vulcanite
Wabash
West Penn
Whitehall
Wolverine

(c) This respondent denies each and every allegation of sub-paragraph (c) of Paragraph Seven.

* IDAHO amended answer.

II. Non-Uniform Answers.

A. BEAVER answers sub-paragraph (c) of Paragraph Seven of Count I as follows:

This respondent denies that it has acted in cooperation with other producers of cement or any others; by the use of provisions in contract forms or otherwise, to prevent diversion in transit as alleged in sub-paragraph (c).

B. CALAVERAS answers sub-paragraph (c) of Paragraph Seven of Count I as follows:

(c) For answer to the allegations contained in subparagraph (c) of said Paragraph Seven, this respondent denies that it has taken cooperative or any measures with any respondent or respondents, by the use of provisions, or any provision, in its or any contract form or forms, or by the use of any means, or in any manner whatsoever or at all, in order to eliminate diversions in transit, as alleged in said complaint, or for any purpose or at all.

C. CALIFORNIA answers sub-paragraph (c) of Paragraph Seven of Count I as follows:

(c) With respect to the allegations of subparagraph (c) of said Paragraph Seven of Count I of the complaint, respondent further particularly avers that it has not taken cooperative, or any, measures in order to eliminate the diversion of shipments of cement from respondent's mill in transit from a specified destination to a different destination where the delivered price is higher. Respondent alleges that it has no knowledge of any instance or instances where such a diversion of shipment has arisen, or has been suggested by any customer, for a number of years. Except as above stated, respondent is without knowledge as to the allegations of said subparagraph (c), and upon that ground denies each and every of the allegations thereof.

D. DIAMOND answers sub-paragraph (c) of Paragraph Seven of Count I as follows:

(c) This respondent says that it has for a long time and as a result of experience, and without any agreement with any of its competitors sold its cement for a particular work or job and at a particular place. It says that because of requirements of lien laws of Ohio and of the requirements of surely companies it is sometimes nec-

essary to show delivery of cement for the work and that the only means respondent has are the bills of lading and records of the railroad companies. It denies that it co-operates with any of the other respondents to prevent diversions in transit.

E. HURON answers sub-paragraph (c) of Paragraph Seven of Count I as follows:

(c) It admits that in its contract forms it seeks to eliminate the diversion of shipments of cement in transit but it shows that the purpose thereof was not to maintain concerted destination prices, and it denies that the tendency of such provision is to maintain concerted destination prices. It shows that the purpose thereof is to prevent disturbance of its relations with its several dealers and of their relation one with the other.

F. IDAHO* answers sub-paragraph (c) of Paragraph Seven of Count I as follows:

Answering sub-section (c) of Paragraph Seven, the respondent Idaho Portland Cement Company has no contract form to eliminate diversion.

G. NORTH AMERICAN answers sub-paragraph (c) of Paragraph Seven of Count I as follows:

Paragraph Seven: This respondent denies each and every allegation of Paragraph Seven.

H. NORTHWESTERN answers sub-paragraph (c) of Paragraph Seven of Count I, as follows:

This respondent further denies each and every allegation contained in Paragraph Seven and each sub-paragraph thereof, except as hereinbefore admitted or otherwise specially pleaded.

I. OREGON answers sub-paragraph (c) of Paragraph Seven of Count I, as follows:

Except as hereinbefore set forth, this respondent denies each and every allegation of Paragraph Seven and of each sub-paragraph and sub-section thereof.

J. PACIFIC answers sub-paragraph (c) of Paragraph Seven of Count I as follows:

(c) Referring to the allegations contained in sub-paragraph (c), this respondent denies each and every, all and singular, the allegations contained therein, and particular-

* Original answer.

ly denies that this respondent has ever done any acts or taken any steps to eliminate diversions in transit.

K. PENN-DIXIE answers sub-paragraph (c) of Paragraph Seven of Count I as follows:

7. Having denied any illegal combination as alleged in Paragraphs Four and Five thereof, this respondent denies each and every allegation contained in Paragraph Seven thereof.

L. RIVERSIDE answers sub-paragraph (c) of Paragraph Seven of Count I as follows:

(c) It is without knowledge as to the facts, or any of them, in said subparagraph (c) alleged except the following: It denies that it has taken measures cooperative with respondents, or any of them, either by the use of provisions in its contract form, in order to eliminate diversions in transit, or otherwise or at all.

M. SANTA CRUZ answers sub-paragraph (c) of Paragraph Seven of Count I as follows:

(c) Answering the allegations contained in subparagraph (c) of said Paragraph Seven, this respondent denies that it has taken cooperative or any measures with any respondent or respondents, by the use of any provision or provisions in its or any contract form or forms, or by the use of any means whatsoever, in order to eliminate the diversions in transit referred to in said sub-paragraph (c) or otherwise or at all.

N. SUPERIOR, INC. answers sub-paragraph (c) of Paragraph Seven of Count I as follows:

Answering sub-paragraph (c) this respondent denies that it has ever entered into any combination or understanding with other respondents to eliminate diversions in transit.

O. YOSEMITE answers sub-paragraph (c) of Paragraph Seven of Count I as follows:

(c) Answering the allegations contained in subparagraph (c) of said Paragraph Seven, this respondent denies that it has taken cooperative or any measures with any respondent or respondents, by the use of any provision or provisions in its or any contract form or forms, or by the use of any means whatsoever, in order to eliminate the diversions in transit referred to in said subparagraph (c) or otherwise or at all.

SUBPARAGRAPH (d) OF PARAGRAPH SEVEN OF COUNT I.

COMPLAINT.

(d) Under recent acts of Congress appropriating for emergency and other expenditures, the Federal Government has expended large sums of money for cement in the West and in certain parts of the South, where it is entitled to reduced railroad freight rates under land grant acts of Congress. These rates have never been published for general distribution. In many instances, they are not precisely known to commercial shippers including marketers of cement and are often highly difficult of determination and frequently in dispute. Respondents have thwarted the efforts of government officials to secure f.o.b. mill prices on cement, both before and during the period of national emergency. If the United States had been able to obtain f.o.b. mill prices for cement, it would have been practicable for it to have elected to purchase from such mill as would have afforded it the maximum benefit of land grant rates. In lieu of quoting upon proposals of the Federal Government upon an f.o.b. mill basis as called for by government officials, respondents have insisted upon maintaining their said pricing system and to that end have employed in each case a "control clause" by the use of which only delivered prices are quoted to the Federal Government. The control clause is used by all producing respondents bidding on any given job in land grant territories. Under this control clause, the respondents arbitrarily select the route and approximate the land grant concession to which the United States is entitled. This results in depriving the United States not only of the full benefit of the land grant rates reserved by acts of Congress but also of the benefit of price competition in its purchases of cement.

ANSWERS.

I. Form of Answer Used by the Cement Institute and Certain Producers.

THE CEMENT INSTITUTE and the following companies use a similar form, with variations as noted in the footnotes:

Aetna
Arkansas
Ash Grove
Colorado
Consolidated
Cumberland
Dewey
Florida
Georgia
Hawkeye
Hermitage
Kosmos
Lehigh
Lone Star
Medusa
Missouri
Monarch*
Monolith
Monolith Midwest
National
Nebraska
Northwestern States
Oklahoma
Petoskey
Utah
Signal Mountain
Southern States
Three Forks
Trinity
Union
Universal Atlas

(d) This respondent denies each and every allegation of sub-paragraph (d) of Paragraph Seven.

II. Second Form of Answer Used by Certain Producers.

The following companies use a similar form with variations as noted in the footnotes:

Bessemer
Castalia
Coplay
Edison
Federal
Giant
Glens Falls
Green Bag W. Va.
Hercules
Idaho*
Keystone
Lawrence
Monarch†
Nazareth
Peerless
Pittsburgh
Standard
Superior
Vulcanite
Wabash
West Penn
Whitehall
Wolverine

* MONARCH amended answer.
‡ IDAHO amended answer.
† MONARCH original answer. The amended answer conforms with the first standard answer set forth above.

(d) This respondent avers that it has never bid on any Federal Government job in land grant territories, and is without knowledge of the facts alleged in sub-paragraph (d) of Paragraph Seven, and therefore denies each and every allegation thereof.

III. Non-Uniform Answers.

A. ALPHA answers sub-paragraph (d) of Paragraph Seven of Count I as follows:

(d) This respondent denies that it has at any time thwarted the efforts of Government officials to secure f.o.b. mill prices on cement, and denies that it has participated in any action tending to deprive the United States Government either of the full benefit of land grant rates or of the benefit of price competition in the purchases of cement. This respondent states that in pursuance of its individual sales policy it has refrained from quoting f.o.b. mill prices upon proposals of the Federal Government, and in lieu thereof has quoted delivered prices; but it further states that in bidding on any given job in land grant territories the Government has been given the advantage of said land grant rates in the delivered prices which it has quoted through the use of the so-called "control clause," or otherwise.

Except as hereinabove set forth, this respondent denies each and every allegation of sub-paragraph (d) of Paragraph Seven.

B. BEAVER answers sub-paragraph (d) of Paragraph Seven of Count I as follows:

This respondent denied that it has thwarted or attempted to thwart the efforts of government officials to secure f.o.b. mill prices on cement, and alleges that it has made sales of cement to the United States Government on a f.o.b. mill basis at Gold Hill, Oregon. Respondent admits that at times in the past it has employed a "control clause" in bidding on a United States Government job in land grant territory, but alleges that it does not now and for some considerable time heretofore has not used said "control clause" in bidding on government jobs. This respondent is without information as to the truth or falsity of the other allegations of sub-paragraph (d) and therefore denies each and every allegation thereof, except the allegations thereof hereinbefore specifically admitted.

C. CALAVERAS answers sub-paragraph (d) of Paragraph Seven of Count I as follows:

(d) For answer to the allegations contained in subparagraph (d) of said Paragraph Seven, this respondent denies that it has, alone or with any other respondent or respondents, thwarted the or any efforts of government officials, or of any of them, to secure f. o. b. mill prices on cement, both before and during, or before or during, or after, the period of national emergency, or otherwise or at all; denies that in lieu of quoting upon proposals of the Federal Government upon an f. o. b. mill basis as called for by government officials, or any of them, this respondent, alone or with any other respondent or respondents, insisted upon maintaining the said or any pricing system, and to that end, or to that or any end, employed a "control clause" by the use of which only delivered prices are quoted to the Federal Government; denies that this respondent uses said control clause, or any particular clause or system, when bidding on any given job in land grant territories; denies that under said control clause, or otherwise or at all, this respondent, alone or with any other respondent or respondents, arbitrarily selects, or at any time has arbitrarily selected, the route, and approximated or approximated the land grant concession to which the United States is entitled.

D. CALIFORNIA answers sub-paragraph (d) of Paragraph Seven of Count I as follows:

(d) With respect to the allegations of subparagraph (d) of said Paragraph Seven, this answering respondent denies that, acting either alone or with any one or more of the other respondents, it has at any time thwarted the efforts of government officials to secure f.o.b. mill prices on cement. It alleges that it and some of the other respondents has and have in most instances quoted f.o.b. mill prices to the federal government, as, for example, in the bids for cement for Boulder Dam, Parker Dam, and Bartlett Dam. The United States has been able to obtain f.o.b. mill prices or the equivalent for the cement for which respondent has submitted a bid, and it has been practical, as to all bidding participated in by this respondent, for the federal government to elect to purchase from such mill as would afford it in the maximum benefit of land grant rates. Respondent denies that it has participated in any action tending to deprive the United States government either of

the full benefit of land grant rates or of the benefit of price competition in the purchase of cement. Respondent alleges that it has occasionally refrained from quoting f.o.b. price upon proposals of the federal government, and in lieu thereof quoted a destination price, but in each such case the federal government has been given the right to deduct the commercial freight rate from the mill to such destination and to ship from the mill upon government bill of lading by such route as the government may designate, so as to give to the government the full benefit of land grant rates and of price competition in the purchase of cement. Respondent denies that this method of bidding or of quoting prices to the federal government has been or is the result of any agreement or understanding by respondent with any others. Respondent is without knowledge as to any of the facts alleged in sub-paragraph (d) of Paragraph Seven, except as above stated, and upon that ground denies each and every thereof.

E. DIAMOND answers sub-paragraph (d) of Paragraph Seven of Count I as follows:

(d) This respondent is not familiar with Federal Government being entitled to reduced freight rates under land grant acts of Congress, and avers the fact to be that the Federal Government is not so far as respondent knows entitled to any reduced railroad rates by reasons of land grants in the territory within which the product of this respondent is sold.

F. GREEN BAG PA. answers sub-paragraph (d) of Paragraph Seven of Count I as follows:

(d) This respondent is without knowledge of the allegation of sub-paragraph (d) of Paragraph Seven. This respondent states that it has never bid on any Federal Government job in land grant territories.

G. HURON answers sub-paragraph (d) of Paragraph Seven of Count I as follows:

(d) As to the matters set forth in subdivision (d) this respondent admits on information and belief that the Federal Government has expended large sums of money for cement in the West and South as therein recited. As to whether land grant rates have been published for general distribution and as to whether they are precisely known to commercial shippers or difficult of determination and frequently in dispute, this respondent has no knowledge and

therefore leaves complainant to its proof. It denies, however, that it has thwarted the efforts of the Government officials to secure f.o.b. prices of cement at any time. It shows that it has some knowledge of land grant rates in the territory in which it disposes of its product and that on deliveries to the United States Government where such land grant rates are applicable and it has quoted a destination price, it has used said land grant rates. It has likewise made a plant price when so requested. It shows that in certain instances the specifications issued by the Government stipulated that the quotation be on the basis of commercial freight rates and in such instances this respondent has quoted on the basis of such commercial freight rates rather than on the land grant rates. It shows, however, that there has been no loss to the Government for the reason that the Government in such instances has made claim against the railroads for any excess in the commercial rates of freight paid over and above the land grant rates applicable to such shipment and such excess has been refunded to it. It has therefore had, even in such instances, the full benefit of said land grant rates This respondent admits that it has used a clause in its contracts with the Government which provides a method by which the Government can, in any given case, determine the contract price of cement on any Government contract f.o.b. its plant but it is not advised as to whether this is the "Control Clause" referred to in said subdivision (d) of said Paragraph Seven. It shows that the clause which it uses gives the Government full control of the route of the shipment and permits it to use the lowest freight rate available to it. It denies that it has by the use of this clause or by its practices deprived the United States either of the benefit of the land grant rates or of the benefit of price competition in the purchases of cement.

H. IDAHO* answers sub-paragraph (d) of Paragraph Seven of Count I as follows:

Answering sub-section (d) of Paragraph Seven, no land grant rates are applicable in the territory served by this company.

I. NORTH AMERICAN answers sub-paragraph (d) of Paragraph Seven of Count I as follows:

Paragraph Seven: This respondent denies each and every allegation of Paragraph Seven.

* Original answer.

J. NORTHWESTERN answers sub-paragraph (d) of Paragraph Seven of Count I as follows:

By way of particular answer to Subparagraph (d) of Paragraph Seven, respondent denies that it has at any time thwarted the efforts of Government officials to secure f.o.b. mill prices on cement, and specifically avers that it has quoted mill prices to the Federal Government, i.e., Grand Coulee Dam. Respondent further denies that it has in any manner been a party to any action tending to deprive the United States Government either of the full benefit of land grant rates or of the benefit of price competition in the purchase of cement. It has sometimes refrained from quoting f.o.b. mill prices upon the proposals of the Federal Government and in lieu thereof has quoted delivered prices, and in bidding on a given job in land grant territory such delivered prices are sometimes expressed by the use of a so-called "control clause." Respondent denies that this method of bidding to the Federal Government is the result of any agreement or understanding between it and any other respondent or party.

K. OREGON answers sub-paragraph (d) of Paragraph Seven of Count I as follows:

Except as hereinbefore set forth this respondent denies each and every allegation of Paragraph Seven and of each subparagraph and subsection thereof.

L. PACIFIC answers sub-paragraph (d) of Paragraph Seven of Count I as follows:

(d) Answering the allegations contained in sub-paragraph (d), this respondent denies each and every, all and singular, the allegations contained therein, and particularly denies that it has thwarted the efforts or any effort of government officials to secure f.o.b. mill prices on cement, either before or during the period of national emergency or at any time, and denies that it, either alone or with any other respondent or respondents, has insisted upon maintaining, or has maintained, or does maintain, the pricing system described in said Count I, and denies that it has ever employed in any case a "control clause," and denies that it arbitrarily or otherwise selects the route or approximates the land grant rate to which the United States is entitled, and denies that this respondent in any way prevents or has prevented the United States from having the benefit of any such land grant rate.

M. PENN-DIXIE answers sub-paragraph (d) of Paragraph Seven of Count I as follows:

7. Having denied any illegal combination as alleged in Paragraphs Four and Five thereof, this respondent denies each and every allegation contained in Paragraph Seven thereof.

N. RIVERSIDE answers sub-paragraph (d) of Paragraph Seven of Count I as follows:

(d) It is without knowledge as to the facts, or any of them, in said subparagraph (d) alleged, except the following: It alleges that it is, and has been, its fixed policy to sell to governmental agencies, whether federal, state, or local, upon the basis of a mill price, or its equivalent, when desired by such agencies, thus permitting such agencies to obtain the benefit of any lower railroad rates to which they are or may be entitled. This fact is known to the Honorable Federal Trade Commission, reference in this connection being made to the Boulder Canyon project bids by this respondent and others upon an f.o.b. cars at mill basis. Reference in this connection is had to Senate Document No. 71 hereinabove referred to, at page 68 and following.

O. SANTA CRUZ answers sub-paragraph (d) of Paragraph Seven of Count I as follows:

(d) Answering the allegations contained in subparagraph (d) of said Paragraph Seven, this respondent denies that it has alone or with any other respondent or respondents thwarted the efforts or any effort of government officials to secure f.o.b. mill prices on coment, either before and during or before or during the period of national emergency or otherwise or at all; denies that in lieu of quoting upon proposals of the federal government upon an f.o.b. mill basis, as called for by government officials or otherwise or at all, this respondent alone or with any other respondent or respondents has insisted upon maintaining the said pricing system referred to in said subparagraph (d), and to that end or to that end has employed in each or any case a "control clause," by the use of which only delivered prices are quoted to the federal government; denies that under said control clause referred to in said subparagraph (d) or otherwise or at all this respondent, either alone or with any other

respondent or respondents, arbitrarily selects or has at any time arbitrarily selected the route, or has selected the route, and approximated or approximated the land grant concession to which the United States is entitled.

P. SOUTHWESTERN answers subparagraph (d) of Paragraph Seven of Count I as follows:

(d) This respondent denies that it has at any time thwarted or attempted to thwart the efforts of the Government officials to secure f.o.b. mill prices on cement; and denies that it has in any manner participated in any action tending to deprive the United States Government either of the full benefit of land grant rates or of the benefit of price competition in purchases of cement.

This respondent admits that in some instances it may have refrained from quoting f.o.b. mill prices upon proposals of the Federal Government, and in lieu thereof may have quoted delivered prices, and that in bidding on any given job in the land grant territories, such delivered prices are sometimes governed by the use of the so-called "control clause", but this respondent denies that this method of bidding to the Federal Government is the result of any agreement or understanding.

This respondent expressly denies that under the "control clause" this respondent has arbitrarily selected, or sought to select the route or to approximate the land grant concession to which the United States is entitled; and it specifically denies that the use of the "control clause", as used by this respondent, has deprived the United States of any benefit of land grant rates reserved by Act of Congress, or of the benefit of price competition in the purchase of cement, and it avers the fact to be that the sole purpose, intent and effect of the "control clause," as used by this respondent in any of its contracts, has been to offer its cement to the Government, giving the Government the benefit of the lowest rate afforded it in land grant territory. The "control clause" is inserted solely to give the Government the benefit of the lowest land grant rate, and to prevent the loss of the contract by a computation which results in a higher figure than that computed by the agents of the Government.

Except as hereinabove set forth this respondent denies each and every allegation of sub-paragraph (d) of Paragraph Seven.

Q. SPOKANE answers sub-paragraph (d) of Paragraph Seven of Count I as follows:

(d) This respondent denies that it has at any time thwarted the efforts of Government officials to secure f.o.b. mill prices on cement, and aver that they have frequently quoted f.o.b. mill prices to the Federal Government as, for example, in bids for cement for Grand Coulee Dam. It denies that it has participated in any action tending to deprive the United States Government either of the full benefit of land grant rates or of the benefit of price competition in the purchase of cement.

Except as hereinabove set forth, this respondent denies each and every allegation of sub-paragraph (d) of Paragraph Seven.

R. SUPERIOR, INC. answers sub-paragraph (d) of Paragraph Seven of Count I as follows:

Answering sub-paragraph (d) this respondent denies that it has ever thwarted the efforts of Government officials to secure f.o.b. mill prices on cement, and states that it has on several occasions quoted f.o.b. mill prices to the Federal Government, one important example being the making of bids for the sale of cement for the Grand Coulee Dam. This respondent further denies that it has ever attempted to deprive the Federal Government of the full benefit of land grant rates, or the benefit of price competition in the purchase of cement. This respondent further admits on information and belief that sometimes bids are made upon Federal projects on the basis of delivered prices, and that in such cases in bidding on any given job in land grant territory such delivered prices are quoted with the use of the so-called "control clause", but this respondent denies that such method of bidding to the Federal Government is the result of any agreement or understanding between this respondent and any other respondent or party.

S. VOLUNTEER answers sub-paragraph (d) of Paragraph Seven of Count I as follows:

(d) This respondent denies that it has at any time thwarted the efforts of Government officials to secure f.o.b. mill prices on cement, and avers that on different

[1] In the amended answer, the clause and aver that they have frequently quoted f.o.b. mill prices to the Federal Government as, for example, in bids for cement for Graind Coulee Dam" is omitted.

occasions it has quoted f.o.b. mill prices to agencies of the United States Government, and in at least one instance made a sale of cement f.o.b. mill to a Federal Agency, to wit, a sale of 125,000 barrels to Tennessee Valley Authority for use in Norris Dam. Respondent denies that it has participated in any action tending to deprive the United States Government either of the full benefit of land grant rates or of the benefit of price competition in the purchases of cement. This respondent states that it sometimes refrains from quoting f.o.b. mill prices upon proposals of the Federal Government, and in lieu thereof it quotes delivered prices, and, upon information and belief, respondent states that other producing respondents sometimes pursue the same course of conduct; that in bidding on any given job in land grant territories such delivered prices are sometimes expressed by the use of a so-called "control clause." It denies that this method of bidding to the Federal Government is the result of any agreement or understanding between it and other producing respondents. In the use of this method of bidding this respondent states that it has acted individually and not pursuant to any agreement or understanding with other producing respondents. Except as hereinabove set forth, these respondents deny each and every allegation of subparagraph (d) of Paragraph Seven.

T. YOSEMITE answers sub-paragraph (d) of Paragraph Seven of Count I as follows:

(d) Answering the allegations contained in sub-paragraph (d) of said Paragraph Seven, this respondent denies that it has alone or with any other respondent or respondents thwarted the efforts or any effort of government officials to secure f.o.b. mill prices on cement, either before and during or before or during the period of national emergency or otherwise or at all; denies that in lieu of quoting upon proposals of the federal government upon an f.o.b. mill basis, as called for by government officials or otherwise or at all, this respondent alone or with any other respondent or respondents has insisted upon maintaining the said pricing system referred to in said subparagraph (d), and to that end or to that end has employed in each or any case a "control clause", by the use of which only delivered prices are quoted to the

federal government; denies that under said control clause referred to in said subparagraph (d) or otherwise or at all this respondent, either alone or with any other respondent or respondents, arbitrarily selects or has at any time arbitrarily selected the route, or has selected the route, and approximated or approximated the land grant concession to which the United States is entitled.

SUBPARAGRAPH (e) OF PARAGRAPH SEVEN OF COUNT I.

COMPLAINT.

(e) Before and during the period that the code of fair competition for the cement industry approved November 27, 1933, pursuant to the National Industrial Recovery Act, was in effect, respondents attempted to obtain approval of a code provision which would require a division of customers into two classes, those to whom cement producers might sell direct and those to whom cement producers would be prohibited from selling direct. These efforts were unsuccessful. Nonetheless, respondents arbitrarily and cooperatively made such classification and division of customers.

ANSWERS.

I. Form of Answer Used by The Cement Institute and Certain Producers.

THE CEMENT INSTITUTE and the following companies use a similar form, with variations of substance as noted in the footnotes.

Alpha
Arkansas
Ash Grove
Castalia
Colorado
Consolidated
Coplay
Cumberland
Dewey
Edison
Federal
Florida
Georgia
Giant
Glens Falls
Green Bag W. Va.
Hawkeye
Hercules
Hermitage
Idaho*

* IDAHO amended answer.

Keystone	Petoskey
Kosmos	Pittsburgh
Lawrence	Utah
Lehigh	Signal Mountain
Lone Star	Southern States
Medusa	Southwestern
Missouri	Standard
Monarch	Superior
Monolith	Three Forks
Monolith Midwest	Trinity
National	Union
Nazareth	Universal Atlas
Nebraska	Vulcanite
Northwestern States	Wabash
Oklahoma	West Penn
Oregon	Whitehall
Peerless	Wolverine

(e) This respondent admits that before and during the effective period of the N.R.A. Cement Code it joined with other producers of cement in an attempt[1] to obtain approval of[2] a code provision which would require a division of customers into classes. It denies that these efforts[3] were unsuccessful. It states that the N.R.A. Code for the Cement Industry, approved November 27, 1933, by the President of the United States, contained in Article XI a Method of Selling and Marketing Cement, which required a division of customers into two classes, those to whom cement producers might sell direct, and those to whom cement producers would be prohibited from selling direct, and it states that this article was later suspended. This respondent further avers that after the suspension of said Article XI the Cement Code Authority attempted[4] to secure[5] its reinstatement, either in its original form or in an amended form, and that such efforts[6] were made at

[1] THE CEMENT INSTITUTE omits "it joined with other producers of cement in an attempt" and substitutes "they attempted."

[2] STANDARD substitutes "favored" for "joined with other producers of cement in an effort to obtain approval of."

[3] STANDARD substitutes "the efforts to secure such a provision" for "these efforts."

[4] OREGON substitutes "it joined in an attempt" for "the Cement Code Authority attempted."

[5] STANDARD omits "the Cement Code Authority attempted to secure" and substitutes "it favored."

[6] STANDARD substitutes "the efforts to bring about such reinstatement" for "such efforts."

the behest of officials of the National Recovery Administration.[7] This respondent denies that it has arbitrarily or in cooperation[8] with others[9] made any classification and division[10] of customers.

Except as hereinabove set forth, this respondent denies each and every allegation[11] of sub-paragraph (e) of Paragraph Seven.

II. Non-Uniform Answers

A. AETNA answers sub-paragraph (e) of Paragraph Seven of Count I as follows:

(e) and (f). This respondent admits that it divides cement customers into two classes,—those to whom it will sell directly, and those to whom it will not, but denies that said classification is arbitrary or made in cooperation or pursuant to any understanding or agreement with other cement producers, and on the contrary, says that said classification is determined by this respondent strictly on the basis of maintaining a proper representation for the distribution of its product.

B. BEAVER answers sub-paragraph (e) of Paragraph Seven as follows:

This respondent denies that alone or in combination with any other producer of cement or any others, it has done any of the acts or been a party to any of the combinations or agreements set forth in sub-paragraphs (e), (f), (g), (h), (i) or (j) of said paragraph, or that otherwise or at all it has adopted or used any unlawful means or practice to effect the combination set forth in Paragraphs Four or Five of the complaint. This respondent admits that small

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[7] MISSOURI omits "and that such efforts were made at the behest of officials of the National Recovery Administration."

[8] THE CEMENT INSTITUTE and STANDARD substitute "co-operatively" for "in cooperation."

CONSOLIDATED, FLORIDA, SIGNAL MOUNTAIN, and TRINITY substitute "cooperatively and arbitrarily" for "arbitrarily or in cooperation."

[9] THE CEMENT INSTITUTE, CONSOLIDATED, FLORIDA, SIGNAL MOUNTAIN, STANDARD, and TRINITY omit "with others."

OREGON substitutes "other producing respondents, or any others" for "others."

[10] MONOLITH substitutes "or classification or division of its customers into classes or otherwise" for "of customers."

[11] OREGON substitutes "Paragraph Seven and of each sub-paragraph and sub-section thereof" for the remainder of the sentence.

quantities of cement of foreign manufacture are imported into the territory in which this respondent sells its products.

Except as hereinbefore expressly admitted or denied, this respondent alleges that it is without information as to the truth or falsity of the facts alleged in said Paragraph Seven, and therefore denies each and every allegation thereof, except the allegations thereof hereinbefore specifically admitted.

C. BESSEMER answers subparagraph (e) of Paragraph Seven of Count I as follows:

(e) This respondent avers that it was incorporated under the laws of the State of Ohio on or about the 15th day of July, 1919, and was for some time subsequent to that period engaged in producing and marketing limestone and cement; that from the period beginning on or about February 1, 1927, and extending to July 1, 1935, this respondent did not engage in the above mentioned business nor in any business whatsoever, that during said period of time it was inactive and had no assets or liabilities; that on July 1, 1935, it acquired and became the owner of the assets and business of a Delaware Corporation of the same name, pursuant to a plan of reorganization approved by the District Court of the United States for the Northern District of Ohio Eastern Division in a proceedings for the reorganization of a Corporation therein pending number 33617; that since July 1, 1935, this respondent has been engaged in the business of producing and marketing cement as alleged in the complaint. This respondent further avers that it was not a member of The Cement Institute during the period that the NRA Code for the Cement industry was in course of preparation or was in operation, and it is therefore without knowledge of the facts alleged in subparagraph (e) of Paragraph Seven, and therefore denies each and every allegation thereof.

D. CALAVERAS answers subparagraph (e) of Paragraph Seven of Count I as follows:

(e) For answer to the allegations of subparagraph (e) of said Paragraph Seven, this respondent denies that before and during, or before or during, or after, the period that the code of fair competition for the cement industry approved November 27, 1933, pursuant to the National Industrial Recovery Act, was in effect, or at any time

whatsoever or at all, it, alone or with any other respondent or respondents, attempted to obtain the approval of a code provision which would require a division of customers into two classes, as alleged in said sub-paragraph (e); and denies that it arbitrarily and cooperatively or arbitrarily or cooperatively, at any time or times, or in any manner whatsoever or at all, made such classification and division, or classification or division, or customers, or of any two or more of them.

E. CALIFORNIA answers sub-paragraph (e) of Paragraph Seven of Count I as follows:

(e) With respect to the allegations of sub-paragraph (e) of said Paragraph Seven, denies that this respondent participated in any effort before or during the period that the Code of Fair Competition for the Cement Industry (approved November 27, 1933, pursuant to the National Industrial Recovery Act) was in effect, or at any other time, to obtain approval of a code provision which would require a division of customers in two classes as alleged in said subparagraph (e), or otherwise, or at all. Denies that this respondent, arbitrarily or cooperatively with any other of the respondents, has made at any time the classification or division of customers in said sub-paragraph (e) referred to, or any other classification or division of customers. This respondent has no knowledge as to the other matters alleged in said subparagraph (e) except as above stated, and upon that ground denies each and every of same.

F. DIAMOND answers sub-paragraph (e) of Paragraph Seven of Count I as follows:

(e) The respondent says that there was included in the Code of Fair Competition of the cement industry, as approved by the President, Article XI thereof, which provided among other things, two classes of customers; those to whom cement producers might sell direct and those to whom they should not sell direct.

Respondent says that said code provision was afterwards suspended and that efforts were made at the request of officials of the National Recovery Administration to have the same in its original or other form, re-instated.

G. GREEN BAG PA. answers subparagraph (e) of Paragraph Seven of Count I as follows:

(e) This respondent denies that before and during the

effective period of the N.R.A. Cement Code it favored an attempt to obtain approval of a code provision which would require a division of customers into classes. It states that the N.R.A. Code for the Cement Industry, approved November 27, 1933, by the President of the United States, contained in Article XI a Method of Selling and Marketing Cement, which required a division of customers into two classes: those to whom cement producers might sell direct, and those to whom cement producers would be prohibited from selling direct, and it states that this article was later suspended. Upon information and belief, this respondent further states that after the suspension of said Article XI the Cement Code Authority attempted to secure its reinstatement, either in its original form or in an amended form, and that such efforts were made at the behest of officials of the National Recovery Administration. This respondent denies that it has arbitrarily or in cooperation with others made any classification or division of customers.

Except as hereinabove set forth, this respondent denies each and every allegation of sub-paragraph (e) of Paragraph Seven.

H. HURON answers sub-paragraph (e) of Paragraph Seven of Count I as follows:

(e). As to the matters set forth in subdivision (e) of Paragraph Seven, this respondent is advised that while the NRA code was in effect the cement industry asked that a code provision be inserted therein which would require a division of customers into two classes, as recited in said subdivision (e), and shows that it was incorporated in the code in Article XI thereof. It shows that this Article of the code was later suspended and that thereafter the industry sought to have it reinstated. It denies that it has arbitrarily and cooperatively made such classification and division of customers, and denies, on information and belief, that the other respondents have so done.

I. IDAHO* answers sub-paragraph (e) of Paragraph Seven of Count I as follows:

Answering sub-section (e) of Paragraph Seven, only in so far as membership in the Cement Institute involved the Idaho Portland Cement Company was it a party in any

* Original answer.

movement to classify customers and the respondent Idaho Portland Cement Company denies that it has arbitrarily and co-operatively made such classification and division of customers.

J. NORTH AMERICAN, answers sub-paragraph (e) of Paragraph Seven of Count I as follows:

Paragraph Seven: This respondent denies each and every allegation of Paragraph Seven.

K. NORTHWESTERN answers sub-paragraph (e) of Paragraph Seven of Count I as follows:

Referring to Sub-Paragraph (e) of Paragraph Seven, respondent admits that an effort was made to secure the approval of the President of the United States to a code of fair competition for the Cement Industry, and that an attempt was made to obtain the approval of a code provision which would require the division of customers. It denies that these efforts were unsuccessful, and says that the N.R.A. Code for the Cement Industry, approved November 27, 1933 by the President of the United States, contained a provision for "a method of selling and marketing cement" in Article II thereof, which required a division of customers into two classes,—those to whom cement producers might sell direct, and those to whom cement producers were prohibited from selling first. Following the suspension of this Article, the N.R.A. representative cooperated with certain of the producing respondents to secure the reinstatement of said Article. Respondent denies each and every other allegation contained in said paragraph.

This respondent further denies each and every allegation contained in Paragraph Seven and each sub-paragraph thereof, except as hereinbefore admitted or otherwise specially pleaded.

L. PACIFIC answers sub-paragraph (e) of Paragraph Seven of Count I as follows:

(e) Answering the allegations contained in sub-paragraph (e), this respondent denies that it arbitrarily or at all, or cooperatively with the other respondents or any of them, or otherwise or at all, at any time made or makes any classification or division of its customers into two classes, as set forth in said subparagraph, or otherwise or at all.

M. PENN-DIXIE answers sub-paragraph (e) of Paragraph Seven of Count I as follows:

7. Having denied any illegal combination as alleged in Paragraphs Four and Five thereof, this respondent denies each and every allegation contained in Paragraph Seven thereof.

N. RIVERSIDE answers sub-paragraph (e) of Paragraph Seven of Count I as follows:

(e) It admits each and every fact in said subparagraph (e) alleged except as follows: It denies that it arbitrarily or cooperatively with other respondents, or any of them, at any time made the classification or division of customers in said subparagraph (e) referred to. It alleges in this connection that as a result of trade custom and usage, recognized and sanctioned for years in the industry, it has made, and does now make, a reasonable distinction between its customers, all as is set forth in the next paragraph.

O. SANTA CRUZ answers sub-paragraph (e) of Paragraph Seven of Count I as follows:

(e) Answering the allegations contained in sub-paragraph (e) of said Paragraph Seven, this respondent denies that before and during, or before or during the period that the code of fair competition for the cement industry approved November 27, 1933, pursuant to the National Industrial Recovery Act, was in effect, or at any time whatsoever, or at all, it, either alone or with any respondent or respondents, attempted to obtain approval of a code provision which would require a division of customers into the two classes alleged in said sub-division (e), and denies that this respondent arbitrarily and cooperatively, or arbitrarily or cooperatively, at any time or times whatsoever, made such classification and division or such classification or division of customers.

P. SPOKANE in its amended answer answers sub-paragraph (e) of Paragraph Seven of Count I as follows:

(e) This respondent denies each and every allegation of sub-paragraph (e) of Paragraph Seven.

Q. SUPERIOR, INC. answers sub-paragraph (e) of Paragraph Seven of Count I as follows:

Answering sub-paragraph (e) this respondent denies that it has ever arbitrarily and cooperatively divided its

customers into certain classifications for the purpose of eliminating competition. This respondent admits that when the N.R.A. Cement Code was being formulated efforts to obtain the approval of a code provision which would require a division of customers was made. This respondent states that this effort was not unsuccessful because the N.R.A. Code for the Cement Industry, approved November 27, 1933 by the President of the United States, did contain in Article 11 the provision for "A Method of Selling and Marketing Cement" and this article required a division of customers into two classes,—those to whom cement producers might sell direct, and those to whom cement producers were prohibited from selling to direct. This respondent states that this article was later suspended. This respondent further alleges on information and belief that after the suspension of Article 11 the official representatives of the N.R.A. cooperated with the efforts of many producing respondents to secure the reinstatement of said article, but this respondent alleges that it is without knowledge of any attempt by any respondent to arbitrarily and co-operatively divide customers into classifications for the purpose of eliminating competition.

R. VOLUNTEER answers sub-paragraph (e) of Paragraph Seven of Count I as follows:

(e) This respondent admits that before and during the effective period of the N.R.A. Cement Code it and various other producing respondents attempted to obtain approval of a code provision which would require a division of customers into classes. It denies that these efforts were unsuccessful. It states that the N.R.A. Code for the Cement Industry, approved November 27, 1933, by the President of the United States, contained in Article XI a Method of Selling and Marketing Cement, which required a division of customers into two classes, those to whom cement producers might sell direct; and those to whom cement producers would be prohibited from selling direct, and it states that this article was later suspended.

This respondent further avers that after the suspension of said Article XI it and other producing respondents attempted to secure its reinstatement, either in its original form or in an amended form, and that such efforts were made by them at the behest of officials of the National Recovery Administration. This respondent avers that it

has always been its policy to sell certain classes of purchasers direct and certain classes of purchasers through dealers, believing that it has the right to select those to whom it will offer for sale and sell its manufactured product—Cement. But respondent denies that it has made such classification effective arbitrarily and cooperatively with any other producing respondents, or pursuant to any agreement or understanding with any other producing respondents, except as it was required by law during the effective period of Article XI of the said Code.

Except as hereinabove set forth, this respondent denies each and every allegation of sub-paragraph (e) of Paragraph Seven.

S. YOSEMITE answers sub-paragraph (e) of Paragraph Seven of Count I as follows:

(e). Answering the allegations contained in subparagraph (e) of said Paragraph Seven, this respondent denies that before and during, or before or during, the period that the code of fair competition for the cement industry approved November 27, 1933, pursuant to the National Industrial Recovery Act, was in effect, or at any time whatsoever, or at all, it, either alone or with any respondent or respondents, attempted to obtain approval of code provision which would require a division of customers into the two classes alleged in said subdivision (e), and denies that this respondent arbitrarily and cooperatively, or arbitrarily or cooperatively, at any time or times whatsoever, made such classification and division or such classification or division of customers.

SUBPARAGRAPH (f) OF PARAGRAPH SEVEN OF COUNT I.

COMPLAINT.

(f) Respondents have entered into an understanding whereby they have combined to limit their sales to middlemen to those who fall within respondents' agreed and arbitrary definition of a "cement dealer." Moreover, respondents agree that sales shall be confined to those who fall within such definition of cement dealers with the exception of certain specific classes of customers, arbitrarily selected, who, though not recognized cement dealers, may, nevertheless, purchase cement.

ANSWERS

I. Answer of The Cement Institute.

THE CEMENT INSTITUTE answers sub-paragraph (f) of Paragraph Seven of Count I as follows:

(f) These respondents are without knowledge of any agreed and arbitrary definition of "cement dealer," and they therefor deny each and every allegation of sub-paragraph (f) of Paragraph Seven.

II. Form of Answer Used by Certain Producers.

The following companies use a similar form, with variations of substance as noted in the footnotes:

Alpha
Arkansas
Ash Grove
Bessemer
Castalia
Colorado
Consolidated
Coplay
Cumberland
Dewey
Edison
Federal
Florida
Georgia
Giant
Glens Falls
Green Bag Pa.
Green Bag W. Va.
Hawkeye
Hercules
Hermitage
Idaho†
Keystone
Komis
Lawrence
Lehigh
Lone Star
Medusa
Missouri
Monarch
Monolith
Monolith Midwest
National
Nazareth
Nebraska
Northwestern States
Oklahoma
Peerless
Petoskey
Pittsburgh
Utah
Signal Mountain
Southern States
Southwestern
Spokane
Standard
Superior
Three Forks
Trinity
Union
Universal Atlas
Volunteer
Vulcanite
Wabash
West Penn
Whitehall
Wolverine

† IDAHO amended answer.

(f) This respondent denies each and every allegation of sub-paragraph (f) of Paragraph Seven.

III. Non-Uniform Answers.

A. AETNA answers sub-paragraph (f) of Paragraph Seven of Count I as follows:

(e) and (f). This repondent admits that it divides cement customers into two classes,—those to whom it will sell directly, and those to whom it will not, but denies that said classification is arbitrary or made in cooperation or pursuant to any understanding or agreement with other cement producers, and on the contrary, says that said classification is determined by this respondent strictly on the basis of maintaining a proper representation for the distribution of its product.

B. BEAVER answers sub-paragraph (f) of Paragraph Seven of Count I as follows:

This respondent denies that alone or in combination with any other producer of cement or any others, it has done any of the acts or been a party to any of the combinations or agreements set forth in subparagraphs (e), (f), (g), (h), (i) or (j) of said paragraph, or that otherwise or at all it has adopted or used any unlawful means or practice to effect the combination set forth in Paragraphs Four or Five of the complaint. This respondent admits that small quantities of cement of foreign manufacture are imported into the territory in which this respondent sells its products.

Except as hereinbefore expressly admitted or denied, this respondent alleges that it is without information as to the truth or falsity of the facts alleged in said Paragraph Seven, and therefore denies each and every allegation thereof, except the allegations thereof hereinbefore specifically admitted.

C. CALAVERAS answers sub-paragraph (f) of Paragraph Seven of Count I as follows:

(f) For answer to the allegations contained in subparagraph (f) of said Paragraph Seven, this respondent denies that it has entered into any understanding with any other respondent or respondents, or that there is or at any time was any understanding whatsoever or at all between this respondent and any other respondent or respondents whereby it and any other respondent or respondents have combined to limit its or their sales to middlemen to those who fall

within what is alleged as "respondents' agreed and arbitrary definition of a 'cement dealer,' " or within any definition of a cement dealer; denies that this respondent agrees or has agreed that sales of any sale shall be confined to those who fall within such or any definition of cement dealer, with or without exception of certain specific classes of customers, arbitrarily selected, who, though not recognized cement dealers, may, nevertheless, purchase cement; denies that this respondent agrees or has agreed with any other respondent or respondents, or with any person, firm or corporation whatsoever or at all, that sales, or any thereof, shall be confined to any person, firm or corporation, or to any class of persons, firms or corporations, or in any manner whatsoever or at all.

D. CALIFORNIA answers sub-paragraph (f) of Paragraph Seven of Count I as follows:

(f) With respect to the allegations of subparagraph (f) of said Paragraph Seven of the complaint, respondent denies that it has entered into any understanding whereby it has combined, or that it has combined, with any of respondents, or with any others, to limit its sales of cement to middlemen to those who fall within any agreed or arbitrary definition of a "cement dealer." Denies that this answering respondent has entered into any understanding or combination or agreement as to the definition of a "cement dealer" or with respect to the middlemen, or with respect to any others, to whom respondent would make sales of cement. Respondent alleges that it has acted independently in determining those to whom it would make sales of cement. Respondent has no knowledge of the allegations of said subparagraph (f) except as above stated, and upon that ground denies each and every of said allegations.

E. DIAMOND answers sub-paragraph (f) of Paragraph Seven of Count I as follows:

(f) This respondent denies that it and other respondents have entered into an understanding whereby they have combined to limit their sales of middlemen, to those who fall within respondents alleged agreed and arbitrary definition of a "Cement Dealer" and says there is no such agreed definition, and it denies that it has agreed with respondents, or that sales shall be confined to those who fall within such alleged definition of cement dealer with the exception of certain specific classes of customers arbitrarily selected who, though not recognized cement dealers, may, nevertheless, purchase cement.

F. HURON answers subparagraph (f) of Paragraph Seven of Count I as follows:

(f) This respondent denies that it has entered into any understanding as is alleged in subdivision (f) of Paragraph Seven and denies that it has agreed as there stated.

G. IDAHO* answers subparagraph (f) of Paragraph Seven of Count I as follows:

Answering sub-section (f) of Paragraph Seven, the respondent Idaho Portland Cement Company denies that it has any understanding with any other company to limit sales. It does admit that it has engaged established building material dealers as retailers for the reason that it considers them to be the logical people to distribute cement to the general trade.

H. NORTH AMERICAN answers subparagraph (f) of Paragraph Seven of Count I as follows:

Paragraph Seven: This respondent denies each and every allegation of Paragraph Seven.

I. NORTHWESTERN answers sub-paragraph (f) of Paragraph Seven of Count I, as follows:

This respondent further denies each and every allegation contained in Paragraph Seven and each sub-paragraph thereof, except as hereinbefore admitted or otherwise specially pleaded.

J. OREGON answers sub-paragraph (f) of Paragraph Seven of Count I of the Complaint as follows:

Except as hereinbefore set forth, this respondent denies each and every allegation of Paragraph Seven and of each sub-paragraph and sub-section thereof.

K. PACIFIC answers sub-paragraph (f) of Paragraph Seven of Count I as follows:

(f) Answering the allegations contained in subparagraph (f), this respondent denies that it has entered into an understanding with any other respondent or respondents or otherwise whereby they or any of them have combined or do combine to limit their sales to middlemen to those who fall within respondents' agreed and arbitrary definition of a cement dealer, and denies that any respondents, including this respondent, have at any time agreed upon or otherwise fixed any arbitrary or agreed definition of a

* Original answer.

cement dealer. This respondent denies that it has agreed with any other respondent or respondents that sales shall be confined to those who fall within such or any definition of cement dealer either with or without the exceptions alleged in said sub-paragraph (f) or any of them or at all.

L. PENN-DIXIE answers sub-paragraph (f) of Paragraph Seven of Count I as follows:

7. Having denied any illegal combination as alleged in Paragraphs Four and Five thereof, this respondent denies each and every allegation contained in Paragraph Seven thereof.

M. RIVERSIDE answers sub-paragraph (f) of Paragraph Seven of Count I as follows:

(f) It is without knowledge as to the facts, or any of them, in said sub-paragraph (f) alleged except the following: It denies that it has entered into an understanding or any understanding whereby it has combined to limit its sales to middlemen to those who fall within any definition, whether that of respondents, if any, or whether agreed, arbitrary, or otherwise, of a "cement dealer." It denies that it agrees, or that it has ever agreed, that sales shall be confined to those who fall within such or any definition of cement dealer, either with the exception of certain specific classes of customers arbitrarily selected, or otherwise, or who, whether recognized cement dealers or not, may nevertheless purchase cement. As mentioned above in subparagraph (e) hereof, this respondent has recognized, and does recognize, as a matter of long established usage and custom, reasonable distinctions as regards sales to the United States Government, its departments and projects, states, counties, and governmental agencies generally, steam railroads, and cement dealers, as regards distribution for retail uses.

N. SANTA CRUZ answers sub-paragraph (f) of Paragraph Seven of Count I as follows:

(f) Answering the allegations contained in subparagraph (f) of said Paragraph Seven, this respondent denies that it has entered into an understanding or that there is or was an understanding whereby it and any respondent or respondents have combined to limit its or their sales to middlemen to those who fall with respondents' agreed and arbitrary or agreed or arbitrary definition of a "cement dealer" or within any definition of a "cement dealer." Denies

that this respondent agrees or has agreed that sales or any thereof shall be confined to those who fall with such or any definition of cement dealers with or without the exception of certain specific classes of customers arbitrarily selected who, though not recognized cement dealers, may nevertheless purchase cement.

Further answering the allegations contained in said sub-paragraph (f), this respondent alleges that it has not agreed with any other respondent or respondents or with any person, firm or corporation whatsoever or at all that sales or any thereof shall be confined to any person, firm or corporation or to any classes of persons, firms or corporations whatsoever.

O. SUPERIOR, INC. answers sub-paragraph (f) of Paragraph Seven of Count I as follows:

Answering sub-paragraph (f) this respondent denies each and all of the allegations therein contained.

P. YOSEMITE answers subparagraph (f) of Paragraph Seven of Count I as follows:

(f) Answering the allegations contained in sub-paragraph (f) of said Paragraph Seven this respondent denies that it has entered into an understanding or that there is or was an understanding whereby it and any respondent or respondents have combined to limit its or their sales to middlemen to those who fall within respondents' agreed and arbitrary or agreed or arbitrary definition of a "cement dealer" or within any definition of a "cement dealer." Denies that this respondent agrees or has agreed that sales or any thereof shall be confined to those who fall within such or any definition of cement dealers with or without the exception of certain specfic classes of customers arbitrarily selected who, though not recognized cement dealers, may nevertheless purchase cement.

Further answering the allegations contained in said sub-paragraph (f), this respondent alleges that it has not agreed with any other respondent or respondents or with any person, firm or corporation whatsoever or at all that sales or any thereof shall be confined to any person, firm or corporation or to any classes of persons, firms or corporations whatsoever.

SUBPARAGRAPH (g) OF PARAGRAPH SEVEN OF COUNT I.

COMPLAINT.

(g) Terms of sale and discounts are uniform and the result of mutual understanding and concert of actions among respondents:

ANSWERS.

I. Form of Answer Used by The Cement Institute and Certain Producers.

THE CEMENT INSTITUTE and the following companies use a similar form.

Alpha
Arkansas
Ash Grove
Bessemer
Castalia
Colorado
Consolidated
Coplay
Cumberland
Dewey
Edison
Federal
Florida
Georgia
Giant
Glens Falls
Green Bag Pa.
Green Bag W. Va.
Hawkeye
Hercules
Hermitage
Idaho‡
Keystone
Kosmos
Lawrence
Lehigh
Lone Star
Medusa
Missouri
Monarch
Monolith
Monolith Midwest
National
Nazareth
Nebraska
Northwestern States
Oklahoma
Peerless
Petoskey
Pittsburgh
Utah
Signal Mountain
Southern States
Southwestern
Spokane
Standard
Superior
Three Forks
Trinity
Union
Universal Atlas
Volunteer
Vulcanite
Wabash
West Penn
Whitehall
Wolverine

‡ IDAHO amended answer.

(g) This respondent denies each and every allegation of sub-paragraph (g) of Paragraph Seven.

II. Non-Uniform Answers.

A. AETNA answers sub-paragraph (g) of Paragraph Seven of Count I as follows:

(g) This respondent admits that the terms of sale of its cement are for the most part uniform with those adopted by other producers of cement who distribute their product in the same localities, but denies that this is the result of any mutual understanding or concert of action among it and such other producers.

B. BEAVER answers sub-paragraph (g) of Paragraph Seven of Count I as follows:

This respondent denies that alone or in combination with any other producer of cement or any others, it has done any of the acts or been a party to any of the combinations or agreements set forth in sub-paragraphs (e), (f), (g), (h), (i) or (j) of said paragraph, or that otherwise or at all it has adopted or used any unlawful means or practice to effect the combination set forth in Paragraphs Four or Five of the complaint. This respondent admits that small quantities of cement of foreign manufacture are imported into the territory in which this respondent sells its products.

Except as hereinbefore expressly admitted or denied, this respondent alleges that it is without information as to the truth or falsity of the facts alleged in said Paragraph Seven, and therefore denies each and every allegation thereof, except the allegations thereof hereinbefore specifically admitted.

C. CALAVERAS answers sub-paragraph (g) of Paragraph Seven of Count I as follows:

(g) For answer to the allegations contained in sub-paragraph (g) of said Paragraph Seven, this respondent denies that terms of sale and discount, or any term or terms of sale or of discount, are uniform, or the result of mutual or any understanding or concert of action of this respondent with any other respondent or respondents; and denies that there is a mutual or any understanding or concert of action by this respondent with any other respondent or respondents.

D. CALIFORNIA answers sub-paragraphs (g) of Paragraph Seven of Count I as follows:

(g) With respect to the allegations of subparagraph (g) of said Paragraph Seven, this respondent denies that the terms of sales or discounts of this respondent and of any of the producing respondents engaged in the sale and delivery of cement within the same geographical areas are uniform or are the result of mutual, or any understanding or concert of action between this respondent and any of the other respondents, or with any others. Respondent has no knowledge of the allegations of said subparagraph (g) except as above stated, and upon that ground denies each and every of said allegations.

E. DIAMOND answers sub-paragraph (g) of Paragraph Seven of Count I as follows:

(g) It denies that terms of sale and discounts are uniform and it denies that they are the result of mutual understanding and concerted action among respondents, and says that prices and conditions of sale in the sales area where respondent is located vary from those in adjoining areas.

F. HURON answers sub-paragraph (g) of Paragraph Seven of Count I as follows:

(g) As to the matters set forth in subdivision (g) of Paragraph Seven this respondent is not advised as to whether the terms of sale and discount are uniform with all respondents. It denies that its terms of sale and discount are uniform with those of all other respondents and denies that they are the result of a mutual understanding and concerted action.

G. IDAHO* answers sub-paragraph (g) of Paragraph Seven of Count I as follows:

Answering sub-section (g) of Paragraph Seven, respondent Idaho Portland Cement Company denies that it has mutual understandings with any of the other respondents to maintain any terms of sale or discounts.

H. NORTH AMERICAN answers subparagraphs (g) of Paragraph Seven of Count I as follows:

Paragraph Seven: This respondent denies each and every allegation of Paragraph Seven.

* Original answer.

I. NORTHWESTERN answers subparagraph (g) of Paragraph Seven of Count I as follows:

This respondent further denies each and every allegation contained in Paragraph Seven and each sub-paragraph thereof except, as hereinbefore admitted or otherwise specially pleaded.

J. OREGON answers subparagraph (g) of Paragraph Seven of Count I as follows:

Except as hereinbefore set forth, this respondent denies each and every allegation of Paragraph Seven of each sub-paragraph and sub-section thereof.

K. PACIFIC answers subparagraph (g) of Paragraph Seven of Count I as follows:

(g) Referring to the allegations contained in sub-paragraph (g), this respondent denies each and every, all and singular, the allegations contained therein, and particularly denies that the terms of sale or discounts of the various respondents are uniform, and denies that it is or has been a party to any understanding or concerted action with any other respondent or respondents.

L. PENN-DIXIE answers subparagraph (g) of Paragraph Seven of Count I as follows:

7. Having denied any illegal combination as alleged in Paragraphs Four and Five thereof, this respondent denies each and every allegation contained in Paragraph Seven thereof.

M. RIVERSIDE answers sub-paragraph (g) of Paragraph Seven of Count I as follows:

(g) It denies that terms of sale or discounts are uniform or that the same are the result of mutual or any understanding or concert of action among respondents, or any of them. It denies the existence of any such understanding, mutual or otherwise, or concert of action as in said subparagraph (g) attempted to be alleged or inferred.

N. SANTA CRUZ answers sub-paragraph (g) of Paragraph Seven of Count I as follows:

(g) Answering the allegations contained in subparagraph (g) of said Paragraph Seven this respondent denies that terms of sale and discount or terms of sale or

discount are uniform, or the result of mutual or any understanding or concert of action of this respondent with any other respondent or respondents.

O. SUPERIOR, INC., answers sub-paragraph (g) of Paragraph Seven of Count I as follows:

Answering sub-paragraph (g) this respondent denies each and all of the allegations therein contained.

P. YOSEMITE answers sub-paragraph (g) of Paragraph Seven of Count I as follows:

(g) Answering the allegations contained in subparagraph (g) of said Paragraph Seven this respondent denies that terms of sale and discount or terms of sale or discount are uniform, or the result of mutual or any understanding or concert of action of this respondent with any other respondent or respondents.

SUBPARAGRAPH (h) OF PARAGRAPH SEVEN OF COUNT I.

COMPLAINT.

(h) A relatively small volume of cement is imported into the United States chiefly from Belgium and Denmark. After paying the tariff charges, it may still be sold in certain seaboard centers at prices lower than the delivered prices at such centers derived under said pricing system. This price competition from foreign sources tends to cause producing respondents, selling at said centers, to make competitive prices and thus to depart from and break down said pricing system. In order to prevent such a breakdown, producing respondents who have customers at such centers (1) have threatened to boycott and have boycotted dealer-customers who trade in imported cement; (2) have in some cases resorted to espionage upon dealers; (3) have made concerted and uniform deviations from the prices which would prevail at such centers under said pricing system; and (4) have taken other steps to minimize or prevent genuine price competition in cement resulting from such importation.

ANSWERS.

I. Answer of The Cement Institute.

THE CEMENT INSTITUTE answers sub-paragraph (h) of Paragraph Seven of Count I, as follows:

(h) These respondents state that they are without knowledge of any unlawful activities of any respondents concerning competition with imported cement, and they therefore deny each and every allegation of sub-paragraph (h) of Paragraph Seven.

II. Form of Answer Used by Certain Producers.

The following companies use a similar form, with variations of substance as noted in the footnotes:

Alpha	Lehigh
Bessemer	Lone Star
Consolidated	Medusa
Coplay	National
Cumberland	Nazareth
Edison	Utah
Florida	Signal Mountain
Georgia	Southern States
Giant	Southwestern
Glens Falls	Trinity
Green Bag Pa.	Universal Atlas
Hercules	Volunteer
Hermitage	Vulcanite
Keystone	West Penn
Lawrence	Whitehall

(h) This respondent admits that cement is imported into the United States from certain European countries and that it is sold in certain seaboard centers.[1]

Except as hereinabove set forth, this respondent denies each and every allegation of sub-paragraph (h) of Paragraph Seven.

[1] GREEN BAG PA. inserts "This respondent states that it does not sell cement in competition with imported cement."

III. Second Form of Answer Used by Certain Producers.

The following companies use a similar form:

Arkansas	Nebraska
Ash Grove	Northwestern States
Castalia	Oklahoma
Colorado	Peerless
Dewey	Petoskey
Federal	Pittsburgh
Green Bag W. Va.	Spokane
Hawkeye	Standard
Idaho†	Superior
Kosmos	Three Forks
Missouri	Union
Monarch	Wabash
Monolith Midwest	Wolverine

(h) This respondent avers that it does not sell cement in competition with imported cement, and is without knowledge of the facts alleged in subparagraph (h) of Paragraph Seven, and therefore denies each and every allegation thereof.

IV. Non-Uniform Answers.

A. AETNA answers sub-paragraph (h) of Paragraph Seven of Count I, as follows:

(h) This respondent does not distribute its product in localities where imported cement is sold, and is without knowledge of the allegations contained in section (h) of Paragraph Seven of the Complaint.

B. BEAVER answers sub-paragraph (h) of Paragraph Seven of Count I, as follows:

This respondent denies that alone or in combination with any other producer of cement or any others, it has done any of the acts or been a party to any of the combinations or agreements set forth in sub-paragraph (e), (f), (g), (h), (i) or (j) of said paragraph, or that otherwise or at all it has adopted or used any unlawful means or practice to effect the combination set forth in Paragraphs Four or Five of the complaint. This respondent admits that small quantities of cement of foreign manu-

† IDAHO amended answer.

facture are imported into the territory in which this respondent sells its products.

Except as hereinbefore expressly admitted or denied, this respondent alleges that it is without information as to the truth or falsity of the facts alleged in said Paragraph Seven, and therefore denies each and every allegation thereof, except the allegations thereof hereinbefore specifically admitted.

C. CALAVERAS answers sub-paragraph (h) of Paragraph Seven of Count I, as follows:

(h) For answer to the allegations contained in subparagraph (h) of said Paragraph Seven, this respondent denies that in order to prevent such or any breakdown, as alleged in said subparagraph (h), or for any purpose whatsoever or at all, this respondent, either alone or with any other respondent or respondents, (1) has threatened to boycott and has boycotted dealer-customers, or has threatened to or has boycotted dealer-customers, or any of them, who trade in imported or any other cement; or (2) has in any case or cases resorted to espionage upon dealers or any of them; or (3) has made concerted and uniform deviations, or concerted or uniform deviations or deviations, from the price or prices which would prevail at such centers mentioned in said subparagraph (h) under said alleged pricing system; or (4) has taken other or any step or steps whatsoever to minimize or prevent genuine price competition in cement resulting from such importation, as alleged in said subparagraph (h), or at all.

D. CALIFORNIA answers sub-paragraph (h) of Paragraph Seven of Count I, as follows:

(h) With respect to the allegations of subparagraph (h) of said Paragraph Seven, respondent alleges that for approximately eight years no cement imported into the United States has been sold in Southern California or Arizona in competition with respondent. Respondent denies that it has done, or is doing, any of the things alleged in said subparagraph (h). Respondent has no knowledge of the allegations of said subparagraph (h) except as above stated, and upon that ground denies each and every of said allegations.

E. DIAMOND answers sub-paragraph (h) of Paragraph Seven of Count I, as follows:

(h) Respondent says that it has no knowledge as to the importation of cement from Belgium, Denmark, or

other countries, other than what it has learned from publications, that it does not come in competition with such cement. It denies all the statements with reference thereto in sub-paragraph H of paragraph 7 of the complaint.

F. HURON answers sub-paragraph (h) of Paragraph Seven of Count I, as follows:

(h). This respondent has no knowledge of the matters set forth in subdivision (h) of Paragraph Seven. It denies that it has at any time done or participated in the doing of any acts as described in such subdivision.

G. IDAHO* answers sub-paragraph (h) of Paragraph Seven of Count I, as follows:

Answering sub-section (h) of Paragraph Seven, to its knowledge, no foreign importations of cement have ever been made in the territory served by this company.

H. MONOLITH answers sub-paragraph (h) of Paragraph Seven of Count I, as follows:

(h) This respondent denies each and every allegation of subparagraph (h) of Paragraph Seven of the Complaint.

I. NORTH AMERICAN answers subparagraph (h) of Paragraph Seven of Count I, as follows:

Paragraph Seven: This respondent denies each and every allegation of Paragraph Seven.

J. NORTHWESTERN answers subparagraph (h) of Paragraph Seven of Count I, as follows:

This respondent further denies each and every allegation contained in Paragraph Seven and each sub-paragraph thereof, except as hereinbefore admitted or otherwise specially pleaded.

K. OREGON answers subparagraph (h) of Paragraph Seven of Count I, as follows:

Except as hereinbefore set forth this respondent denies each and every allegation of Paragraph Seven and of each sub-paragraph and sub-section thereof.

L. PACIFIC answers subparagraph (h) of Paragraph Seven of Count I, as follows:

(h). Answering the allegations contained in subparagraph (h), this respondent denies that in order to prevent the alleged breakdown described in said subpara-

* Original answer.

graph (h) or for any purpose whatsoever, this respondent in concert with any other respondent or respondents or at all has threatened or threatens to boycott or has boycotted or does boycott dealer customers or any of them, has in any case or cases resorted or does resort to espionage upon dealers or any of them, has made or makes concerted or uniform deviations or any deviations from the price or prices which would prevail in any of the centers mentioned in said subparagraph (h) under said alleged pricing system, or has taken or does take other steps or any steps to minimize or prevent genuine price competition in cement resulting from the importation of cement, as alleged in subparagraph (h).

M. PENN-DIXIE answers subparagraphs (h) of Paragraph Seven of Count I, as follows:

7. Having denied any illegal combination as alleged in Paragraphs Four and Five thereof, this respondent denies each and every allegation contained in Paragraph Seven thereof.

M. PENN-DIXIE answers subparagraph (h) of Paragraph Seven of Count I, as follows:

(h) It is without knowledge as to the facts, or any of them, in said subparagraph (h) alleged except the following: It alleges that it does not sell at the seaboard centers referred to in said subparagraph (h), nor does it have customers at such centers.

O. SANTA CRUZ answers sub-paragraph (h) of Paragraph Seven of Count I, as follows:

(h) Answering the allegations contained in subparagraph (h) of said Paragraph Seven, this respondent denies that in order to prevent the alleged breakdown described in said subparagraph (h) or for any purpose whatsoever, this respondent, either alone or in concert with any other respondent or respondents—(1) has threatened to boycott or has boycotted dealer-customers, or any of them, who trade in imported cement; or (2) has in any case or cases resorted to espionage upon dealers of any of them; or (3) has made concerted and uniform deviations, or concerted or uniform deviations, or any deviation from the price or prices which would prevail at any of the centers mentioned in said subparagraph (h) under said alleged pricing system; or (4) has taken other steps or any step

or steps to minimize or prevent genuine price competition in cement resulting from the importation of cement alleged in said subparagraph (h).

P. SUPERIOR, INC. answers sub-paragraph (h) of Paragraph Seven of Count I, as follows:

Answering sub-paragraph (h) this respondent denies that it has ever threatened to boycott, or boycotted dealer-customers who trade in imported cement, and denies that it has ever resorted to espionage upon dealers, and denies that it has ever made concerted and uniform deviation from the prices which would prevail at such centers under said alleged pricing system, and also denies that it has taken any other steps to minimize or prevent genuine price competition in cement resulting from such importation.

Q. YOSEMITE answers sub-paragraph (h) of Paragraph Seven of Count I, as follows:

(h) Answering the allegations contained in subparagraph (h) of said Paragraph Seven, this respondent denies that in order to prevent the alleged breakdown described in said subparagraph (h) or for any purpose whatsoever, this respondent, either alone or in concert with any other respondent or respondents—(1) has threatened to boycott or has boycotted dealer-customers, or any of them, who trade in imported cement; or (2) has in any case or cases resorted to espionage upon dealers or any of them; or (3) has made concerted and uniform deviations, or concerted or uniform deviations, or any deviation from the price or prices which would prevail at any of the centers mentioned in said subparagraph (h) under said alleged pricing system; or (4) has taken other steps or any step or steps to minimize or prevent genuine price competition in cement resulting from the importation of cement alleged in said subparagraph (h).

SUBPARAGRAPH (i) OF PARAGRAPH SEVEN OF COUNT I.

COMPLAINT.

(i) Among the functions of respondent Institute, is that of interpreting the policies of cement companies and of formulating official policies for the industry both through its principal office and its officers and trustees and through its regional offices, freight bureaus and committees. These policies as formulated by the Institute promote the combination in Paragraphs Four and Five hereof described. Where individual action by producing respondents might result in breaking down the said pricing system and result in price competition, it is a frequent practice on the part of members to refer questions of policy to the Institute or to a divisional office of the Institute. Meetings of the Institute and of sectional or local groups of producers are also means for promoting the said described system of pricing.

ANSWERS.

I. Form of Answer Used by The Cement Institute and Certain Producers.

THE CEMENT INSTITUTE and the following companies use a similar form.

Aetna
Alpha
Arkansas
Ash Grove
Bessemer
Castalia
Colorado
Consolidated
Coplay
Cumberland
Dewey
Diamond
Edison
Federal
Florida
Georgia
Giant
Glens Falls
Green Bag W. Va.
Hawkeye
Hercules
Hermitage
Idaho‡
Keystone
Kosmos
Lawrence
Lehigh
Lone Star
Medusa
Missouri
Monarch
Monolith

Monolith Midwest	Spokane
National	Standard
Nazareth	Superior
Nebraska	Three Forks
Northwestern States	Trinity
Oklahoma	Union
Peerless	Universal Atlas
Petoskey	Volunteer
Pittsburgh	Vulcanite
Utah	Wabash
Signal Mountain	West Penn
Southern States	Whitehall
Southwestern	Wolverine

(i) This respondent denies each and every allegation of sub-paragraph (i) or Paragraph Seven.

II. Non-Uniform Answers.

A. BEAVER answers sub-paragraph (i) of Paragraph Seven of Count I, as follows:

This respondent denies that alone or in combination with any other producer of cement or any others, it has done any of the acts or been a party to any of the combinations or agreements set forth in sub-paragraphs (e), (f), (g), (h), (i) or (j) of said paragraph, or that otherwise or at all it has adopted or used any unlawful means or practice to effect the combination set forth in Paragraphs Four or Five of the complaint. This respondent admits that small quantities of cement of foreign manufacture are imported into the territory in which this respondent sells its products.

Except as hereinbefore expressly admitted or denied, this respondent alleges that it is without information as to the truth or falsity of the facts alleged in said Paragraph Seven, and therefore denies each and every allegation thereof, except the allegations thereof hereinbefore specifically admitted.

B. CALAVERAS answers sub-paragraph (i) of Paragraph Seven of Count I, as follows:

(i) For answer to the allegations contained in sub-paragraph (i) or said Paragraph Seven, this respondent denies that among the or any function or functions of the Institute is that of interpreting the or any policy or

policies of cement companies, or any of them, or of formulating official or any policy or policies for the industry through its principal office and its officers and trustees, and through its regional offices, freight bureaus and committees, or through its principal or any office or officer or officers or trustee or trustees or freight bureau or any bureau or committee or committees, or in any manner whatsoever at all; denies that the policies or any of them alleged in said subparagraph (i) as formulated by the Institute promote the alleged combination described in Paragraphs Four and Five of said complaint, or any combination; denies that where individual action or any action by this respondent or any respondent or respondents might result in breaking down the pricing system alleged in said complaint, or result in price competition, it is a frequent practice, or any practice on the part of members, or any member, to refer questions of policy to the Institute or to a divisional office of the Institute; denies that meetings of the Institute and of sectional or local groups of producers, or any meeting or meetings of the Institute or of any section or local group or groups of producers, are or is a means for promoting by this respondent, alone or in concert with any other respondent or respondents, the said described system of pricing, or of any system of pricing.

C. CALIFORNIA answers sub-paragraph (i) of Paragraph Seven of Count I, as follows:

(i) With respect to the allegations of subparagraph (i) of said Paragraph Seven, this answering respondent denies that among the functions of respondent Institute is that of interpreting any of the policies of this answering respondent or, to its knowledge, of any of the policies of any other cement companies, or of formulating official, or any, policies for the industry, either through its principal office or any office or offices, or any of its officers or trustees, or through any of its regional offices, freight bureaus, or otherwise. Denies that any policy or policies as formulated by the Institute promote the alleged combination in Paragraphs Four and Five of said Count I described or referred to. Denies that it is a frequent practice, or a practice, on the part of any of the members of the Institute to refer any questions of policy to the Institute or to a divisional office of the Institute under any circumstances or conditions, to the knowledge

of this respondent. Denies that any of the meetings of the Institute, or of sectional or local groups of producers are means for promoting the said described system of pricing, in so far as this answering respondent has any knowledge or information. Respondent has no knowledge of the allegations of said subparagraph (i) except as above stated, and upon that ground denies each and every of said allegations.

D. GREEN BAG PA. answers sub-paragraph (i) of Paragraph Seven of Count I, as follows:

(i) Upon information and belief, this respondent denies each and every allegation of sub-paragraph (i) of Paragraph Seven. Neither this respondent nor any employee thereof is connected with The Cement Institute as trustee or officer thereof.

E. HURON answers sub-paragraph (i) of Paragraph Seven of Count I, as follows:

(i) As to the matters set forth in subdivision (i), this respondent denies same.

F. IDAHO* answers sub-paragraph (i) of Paragraph Seven of Count I, as follows:

Answering sub-section (i) of Paragraph Seven, respondent Idaho Portland Cement Company has never at any time referred any question of policy to the Cement Institute and has adopted no policies except those generally approved under the National Recovery Act.

G. NORTH AMERICAN answers sub-paragraph (i) of Paragraph Seven of Count I, as follows:

Paragraph Seven: This respondent denies each and every allegation of Paragraph Seven.

H. NORTHWESTERN answers paragraph (i) of Paragraph Seven of Count I as follows:

This respondent further denies each and every allegation contained in Paragraph Seven and each sub-paragraph thereof, except as hereinbefore admitted or otherwise specially pleaded.

I. OREGON answers sub-paragraph (i) of Paragraph Seven of Count I as follows:

Except as hereinbefore set forth, this respondent denies

* Original answer.

each and every allegation of Paragraph Seven and of each sub-paragraph and sub-section thereof.

J. PACIFIC answers subparagraph (i) of Paragraph Seven of Count I, as follows:

(i) Answering the allegations contained in subparagraph (i), this respondent denies each and every, all and singular, the allegations contained therein, and particularly denies that among the functions of respondent Institute is that of interpreting the policies of cement companies, including this respondent, or of formulating official policies for the industry, either to promote the alleged combination described in paragraphs IV and V of said Count I or otherwise or at all, and denies that it is a frequent or any practice for this respondent to refer questions of policy to the Institute or to a divisional office of the Institute either under the or any of the occasions alleged in said subdivision (i) or otherwise or at all, and denies that any meetings of the Institute or of sectional or local groups of producers, including this respondent, are means for promoting the said described system of pricing.

K. PENN-DIXIE answers subparagraph (i) of Paragraph Seven of Count I, as follows:

7. Having denied any illegal combination as alleged in Paragraphs Four and Five thereof, this respondent denies each and every allegation contained in Paragraph Seven thereof.

L. RIVERSIDE answers sub-paragraph (i) of Paragraph Seven of Count I, as follows:

(i) It denies that among the functions of respondent Institute is that of interpreting the policies of this respondent, or to its knowledge, of any respondent, or of formulating official policies for the industry, either through its principal office or any office or offices, or its officers or trustees, or through its regional offices, freight bureaus, or otherwise. It denies that, to its knowledge, these or any policies, as formulated by the Institute, promote the alleged combination in Paragraphs Four and Five of the complaint attempted to be described. It denies that, to its knowledge, it is a frequent or any practice, under any circumstances, on the part of members, or any thereof, to refer questions of policy to the Institute or to a divisional office or offices thereof. It denies that, to its knowledge,

meetings of the Institute, or of sectional or local groups of producers, are also means or are any means for promoting the said described system of pricing.

M. SANTA CRUZ answers sub-paragraph (i) of Paragraph Seven of Count I as follows:

(i) Answering the allegations contained in sub-paragraph (i) of said Paragraph Seven, this respondent denies that among the functions of respondent Institute is that of interpreting the policies of cement companies or of formulating official policies for the industry either through its principal office or its officers or trustees or through its regional offices, freight bureaus or committees, or otherwise, or at all. Denies that the policies or any of them alleged in said subparagraph (i) as formulated by the Institute promote the alleged combination described in Paragraph Four or Five of the complaint. Denies that where individual action or any action by this respondent or any respondent or respondents might result in breaking down the pricing system alleged in said complaint, or result in price competition, it is a frequent practice or it is the practice at all on the part of members or any member to refer questions of policy to the Institute or to a divisional office of the Institute. Denies that meetings of the Institute or of sectional or of local groups of producers are also means or are means for promoting by this respondent, either alone or in concert with any respondent or respondents, the said described system of pricing.

N. SUPERIOR, INC. answers sub-paragraph (i) of Paragraph Seven of Count I as follows:

Answering sub-paragraph (i) this respondent denies that the respondent Institute interprets the policies of this respondent and alleges that it is without knowledge of the other allegations contained in said sub-paragraph and therefore denies the same.

O. YOSEMITE answers sub-paragraph (i) of Paragraph Seven of Count I, as follows:

(i) Answering the allegations contained in sub-paragraph (i) of said Paragraph Seven, this respondent denies that among the functions of respondent Institute is that of interpreting the policies of cement companies or of formulating official policies for the industry either through its principal office or its officers or trustees or through its

regional officers, freight bureaus or committees, or otherwise, or at all. Denies that the policies or any of them alleged in said subparagraph (i) as formulated by the Institute promote the alleged combination described in Paragraphs Four or Five of the complaint. Denies that where individual action or any action by this respondent or any respondent or respondents might result in breaking down the pricing system alleged in said complaint, or result in price competition, it is a frequent practice or it is the practice at all on the part of members or any member to refer questions of policy to the Institute or to a divisional office of the Institute. Denies that meetings of the Institute or of sectional or of local groups of producers are also means or are means for promoting by this respondent, either alone or in concert with any respondent or respondents, the said described system of pricing.

SUBPARAGRAPH (J) OF PARAGRAPH SEVEN OF COUNT I.

COMPLAINT.

(j) By united action, respondents have sought to camouflage their combination and to allay public suspicion and criticism so that they may more effectively carry on said combination, by causing public advertisements to be prepared, published, and circulated, in which advertisements respondents falsely represented that the basing point method of pricing cement was practiced in order to discourage monopolistic practices and preserve free competition. Such representations were privately characterized by a prominent producer and trustee of respondent Institute as "sheer bunk and hypocrisy" in a letter written by him during May, 1934, to his associated leaders in the Institute. Said producer and trustee also stated in said letter that "the truth is of course—and there can be no serious, respectable discussion of our case unless this is acknowledged—that ours in an industry above all others that cannot stand free competition, that must systematically restrain competition or be ruined."

The foregoing means and practices set forth in subparagraphs (a) to (j), inclusive, are not exclusively alleged. There are numerous other unlawful means and practices which have been employed under the combination averred in Paragraphs Four and Five.

ANSWERS.

I. Form of Answer Used by The Cement Institute and Certain Producers.

THE CEMENT INSTITUTE and the following companies use a similar form, with variations of substance as noted in the footnotes:

Alpha
Arkansas
Ash Grove
Bessemer
Castalia
Colorado
Consolidated
Coplay
Cumberland
Dewey
Diamond
Edison
Federal
Florida
Georgia
Giant
Glens Falls
Green Bag W. Va.
Hawkeye
Hercules
Hermitage
Idaho‡
Keystone
Kosmos
Lawrence
Lehigh
Lone Star
Medusa
Missouri
Monarch
Monolith
Monolith Midwest
National
Nazareth
Nebraska
North American
Northwestern States
Oklahoma
Peerless
Petoskey
Pittsburgh
Utah
Signal Mountain
Southern States
Southwestern
Spokane
Standard
Superior
Three Forks
Trinity
Union
Universal Atlas
Volunteer
Vulcanite
Wabash
West Penn
Whitehall
Wolverine

(j) This respondent denies each and every allegation of sub-paragraph (j) of Paragraph Seven.

‡ IDAHO amended answer.

Except[1] as hereinabove set forth this respondent denies each and every allegation of Paragraph Seven.[2]

II. Non-Uniform Answers.

A. AETNA answers sub-paragraph (j) of Paragraph Seven of Count I as follows:

(j) This respondent is without knowledge of the allegations contained in section (j) of Paragraph Seven of the Complaint with respect to the characterization of certain advertisements prepared by the Institute. It denies the remaining allegations contained therein.

B. BEAVER answers sub-paragraph (j) of Paragraph Seven of Count I as follows:

This respondent denies that alone or in combination with any other producer of cement or any others, it has done any of the acts or been a party to any of the combinations or agreements set forth in sub-paragraphs (e), (f), (g), (h), (i) or (j) of said paragraph, or that otherwise or at all it has adopted or used any unlawful means or practice to effect the combination set forth in Paragraphs Four or Five of the complaint. This respondent admits that small quantities of cement of foreign manufacture are imported into the territory in which this respondent sells its products.

Except as hereinbefore expressly admitted or denied, this respondent alleges that it is without information as to the truth or falsity of the facts alleged in said Paragraph Seven, and therefore denies each and every allegation thereof, except the allegations thereof hereinbefore specifically admitted.

C. CALAVERAS answer sub-paragraph (j) of Paragraph Seven of Count I as follows:

(j) For answer to the allegations contained in sub-paragraph (j) of said Paragraph Seven, this respondent denies that it is or ever has been a member of or party to the

[1] THE CEMENT INSTITUTE substitutes "These respondents are without knowledge of the facts alleged concerning producing respondents and except" for "Except."

[2] DIAMOND inserts "and the sub-paragraphs thereof."

[3] MONOLITH inserts "and of each subparagraph and subsection thereof."

VOLUNTEER, MARQUETTE and NORTH AMERICAN omit the entire preceding paragraph.

combination alleged in subparagraph (j) or to any other combination; denies that by united action, or any other action whatsoever or at all, this respondent has sought to camouflage said alleged combination or to allay public suspicion or criticism so that it, or any other respondent or respondents, may more effectively carry on said alleged combination by causing public advertisements to be prepared, published and circulated, in which advertisements it, or any respondent or respondents, falsely represented, or represented at all, that the basing point method of pricing cement was practiced in order to discourage monopolistic practices and preserve free competition, or for any purpose or at all; denies that this respondent caused at any time any public advertisements or advertisement to be prepared or published or circulated dealing either directly or indirectly with the basing point or any other method of pricing cement; and denies that this respondent has employed any unlawful means or practice whatsoever or at all.

For further answer to the allegations contained in said Paragraph Seven of Count I of said complaint, this respondent states that it is without knowledge as to any of said allegations which it has not herein specifically denied.

D. CALIFORNIA answers sub-paragraph (j) of Paragraph Seven of Count I as follows:

(j) Denies that, by united action, or otherwise, this respondent, or, to its knowledge, any of the other respondents has or have sought to camouflage their alleged combination, or any combination, or to allay public suspicion or criticism, or so that they, or any of them, may effectively carry on said alleged combination, or any combination, either by causing any public advertisements to be prepared, published, or circulated, in which advertisements respondents, or any of them, falsely, or otherwise, represented that the basing point method of pricing cement is practiced in order to discourage any monopolistic practices or preserve free competition, or otherwise, or at all. Denies that there are numerous other unlawful, or any, means or practices which have been employed by this answering respondent, or, to its knowledge, by any other of the respondents, under the alleged combination referred to in Paragraphs Four and Five of said Count I, or under any combination. Respondent has no knowledge of the

allegations of said subparagraph (j) except as above stated, and upon that ground denies each and every of said allegation.

Except as herein set forth, this respondent denies each and every of the allegations in Paragraph Seven and of each subparagraph and subdivision thereof.

E. GREEN BAG PA. answers sub-paragraph (j) of Paragraph Seven. This respondent denies each and every allegation of sub-paragraph (j) of Paragraph Seven in so far as constituting a charge against this respondent.

Except as hereinbefore set forth, this respondent denies each and every allegation of Paragraph Seven.

F. HURON answers sub-paragraph (j) of Paragraph Seven of Count I as follows:

(j) As to the matters set forth in subdivision (j), this respondent on information and belief denies the allegations in the first sentence of said subdivision. It shows that it has not done or participated in the doing of any action as there alleged. As to the matters set forth in the remainder of subdivision (j), it has no knowledge and therefore leaves complainant to its proof. It asserts, however, that such allegations are immaterial.

Answering the last paragraph of said Paragraph Seven, this respondent denies that other means and practices than those alleged in the complaint have been employed under the combination averred therein.

G. IDAHO* answers sub-paragraph (j) of Paragraph Seven of Count I as follows:

Answering sub-section (j) of Paragraph Seven, the respondent Idaho Portland Cement Company, has not, at any time, been a party to and has no knowledge of any such combination.

H. NORTHWESTERN answers sub-paragraph (j) of Paragraph Seven of Count I as follows:

This respondent further denies each and every allegation contained in Paragraph Seven and each sub-paragraph thereof, except as hereinbefore admitted or otherwise specially pleaded.

I. Oregon answers sub-paragraph (j) of Paragraph Seven of Count I as follows:

*Original answer.

Except as hereinbefore set forth, this respondent denies each and every allegation of Paragraph Seven and of each sub-paragraph and sub-section thereof.

I. OREGON answers sub-paragraph (j) of Paragraph Seven of Count I as follows:

(j) Referring to the allegations contained in subparagraph (j), this respondent denies that this respondent, either by united action with the other respondents or any of them or otherwise, has sought to camouflage the alleged combination, the existence of which is denied, or to allay public suspicion or criticism so that said respondents may more effectively carry on said combination or for any other purpose, by causing public advertisements to be prepared or published or circulated, in which advertisements respondent falsely represented that the basing point method of pricing cement was practiced in order to discourage monopolistic practices and preserve free competition or otherwise or at all.

This respondent denies that there are numerous or other unlawful or any means or practices which have been employed under the combination averred in paragraphs IV and V of said Count I or otherwise or at all.

Further answering the allegations contained in said paragraph VII, this respondent alleges that it is not now and never has been a member of or a party to any such combination as is mentioned in said paragraph VII, or otherwise mentioned in said Count I.

Further answering the allegations contained in said paragraph VII, including the allegations contained in each and every subparagraph and subdivision thereof, this respondent states that it is without knowledge as to any thereof which it has not herein specifically admitted or denied, and basing its denial upon such ground, denies the same, and each and every part thereof.

K. PENN-DIXIE answers sub-paragraph (j) of Paragraph Seven of Count I as follows:

7. Having denied any illegal combination as alleged in Paragraphs Four and Five thereof, this respondent denies each and every allegation contained in Paragraph Seven thereof.

L. RIVERSIDE answers sub-paragraph (j) of Paragraph Seven of Count I as follows:

(j) It denies that by united action, or any action or

otherwise, this respondent, or, to its knowledge, any respondents, have sought to camouflage their asserted combination, or any combination, or to allay public suspicion or criticism, so that they may more effectively carry on said combination, or otherwise, either by causing public advertisements to be prepared, published, or circulated, in which advertisements respondents, or any of them, falsely, or at all represented that the basing-point method of pricing cement was practiced in order to discourage monopolistic practices or to preserve free competition, or otherwise or at all. With regard to the evidentiary matter pleaded in said subparagraph (j), being the private correspondence referred to in said subparagraph, this respondent admits that the letter in said subparagraph referred to was written by John Treanor, Esq., now deceased, under date of May 17, 1934, at a time when he was president of this respondent, and that said letter contained, among other things, the language quoted in said subparagraph (j). Said letter was written and addressed to B. H. Rader, Esq., Regional Manager of respondent, The Cement Institute. A proper understanding of the language quoted as aforesaid requires a reading of said letter as a whole. Said letter will be produced at the proper time.

It denies that there are numerous other unlawful means or practices which have been employed, or that any unlawful means or practices which have been employed, under the alleged combination averred in Paragraphs Four and Five of said Count.

M. SANTA CRUZ answers sub-paragraph (j) of Paragraph Seven of Count I as follows:

(j) Answering the allegations contained in subparagraph (j) of said Paragraph Seven, this respondent denies that by united or by any action whatsoever, or at all, this respondent has sought to camouflage said alleged combination or to allay public suspicion or criticism, so that it or that any other respondent may more effectively carry on or may carry on at all said alleged combination, by causing public advertisements to be prepared, published or circulated, in which advertisements or advertisement it or any respondent or respondents falsely represented or represented at all that the basing point method of pricing cement was practiced in order to discourage monopolistic practices or preserve free competition.

Further answering the allegations contained in said subparagraph (j) this respondent alleges that it is not now and never has been a member of or a party to the combination mentioned in subparagraph (j), if any exists or ever has existed.

This respondent is without knowledge concerning the allegations in said Paragraph Seven, including the allegations contained in each and every subparagraph and subdivision thereof, which it has not herein specifically admitted or specifically denied, and therefore it denies such allegations and each of them.

N. SUPERIOR, INC. answer sub-paragraph (j) of Paragraph Seven of Count I as follows:

Answering sub-paragraph (j) this respondent denies that it has ever prepared, published or circulated any advertisements as alleged in sub-paragraph (j), and generally denies each and every other allegation contained in said sub-paragraph.

Further answering Paragraph Seven of Count I this respondent denies each and all of the remaining allegations therein contained.

O. YOSEMITE answers sub-paragraph (j) of Paragraph Seven of Count I as follows:

(j) Answering the allegations contained in sub-paragraph (j) of said Paragraph Seven, this respondent denies that by united or by any action whatsoever, or at all, this respondent has sought to camouflage said alleged combination or to allay public suspicion or criticism, so that it or that any other respondent may more effectively carry on or may carry on at all said alleged combination, by causing public advertisements to be prepared, published or circulated, in which advertisements or advertisements it or any respondent or respondents falsely represented or represented at all that the basing point method of pricing cement was practiced in order to discourage monopolistic practices or preserve free competition.

Further answering the allegations contained in said subparagraph (j) this respondent alleges that it is not now and never has been a member of or a party to the combination mentioned in subparagraph (j), if any exists or ever has existed.

This respondent is without knowledge concerning the

allegations in said Paragraph Seven, including the allegations contained in each and every sub-paragraph and subdivision thereof, which it has not herein specifically admitted or specifically denied, and therefore it denies such allegations and each of them.

PARAGRAPH EIGHT OF COUNT ONE

COMPLAINT

Effects of the Combination.

Paragraph Eight: The effect of the adoption, continuance and maintenance of the said pricing system, to the extent that it has been and is followed, has been and is completely to destroy competition in price. Thereunder each producing respondent quotes and charges a delivered price to any given customer wherever said customer may be located, identical with that quoted and charged to that customer by every other producer adhering to the system. This is done by each with the knowledge and the mutual understanding that all other producers following the system will quote and charge delivered prices identical with his own and with one another. Among other effects of the said pricing system, to the extent that the same is used, are the following:

(a) Each producing respondent whose mill is located at a basing point receives its highest net price or true price, when it sells to customers located within the area governed by the basing point where such producer is located. Each producing respondent whose mill is not located at a basing point receives its highest net price or true price from customers located at its own place of production; from customers so located it receives, in addition to the base price at the governing basing point, the rate of all-rail freight from such such basing point to customers' location and is obliged to pay no cost of transportation except possibly from one part of the city to another. Both of these classes of producers refrain from so reducing their delivered prices, in the territory where they receive their highest net price, as to obtain or hold their most profitable business. Each reciprocally refrains from price competition and offers no such price concessions as might make it impracticable for more distant producers to obtain the business, because of the greater freight costs which would necessarily be in-

curred in delivering from their mills. Thus, each respondent producer may sell in the vicinity of mills of other producers without encountering any delivered price competition from the latter producers. In many instances respondent producers thus non-competitively transport their said products beyond the successive localities of other producers' mills into far distant points of consumption.

(b) In order thus to eliminate price competition, producing respondents' base prices are placed high enough to permit them often to defray much higher amounts of actual freight than the amount of freight from the governing basing point to destination, which latter they include in the formula price under the said pricing system. This would not occur under conditions of true price competition.

(c) The costs of producing cement vary somewhat due to natural conditions and differences in efficiency. By said pricing system variations in such cost are nullified as an influence and check upon prices. The incentive for any producing respondent to offer lower prices in order to obtain a greater volume of business is largely removed as shown by the fact that under said pricing system each producing respondent shares the territory wherein he obtains his highest net price with far distant producers. Under the said pricing system, delivered prices are charged by respondent producers with little regard to the varying local conditions of supply and demand. Said prices are made through a concert of action, which is formulated and expressed in terms of the said pricing system and applied throughout most, if not all, of the country. Thus respondents maintain, against thousands of private and public consumers in many parts of the United States, and artificial price level little related to and not governed by truly competitive conditions. The result is higher base prices and higher delivered prices to the consuming public.

(d) Even in times of greatly depressed demand, respondents' combination has tended to eliminate the strong trend toward lower prices which normally operates at such times. The maintenance or higher prices delays the return to the market of prospective buyers, who, on account of reduced purchasing power or fear, can, or believe that they can, buy only at lower prices, and thereby delays recovery. Rather than make reductions in price normal to a time of depression respondents have elected to continue the said pricing system and to refrain from making truly competitive prices, even for the respective territories in which, as

described in sub-paragraph (a) of this Paragraph Eight, they obtained their highest net price, and even though they were then operating far below the respective capacities of their mills. Thus, in definite measure, respondents by their combination in Paragraphs Four and Five hereof described, have neutralized the natural economic forces which operate to restore prosperity and have so acted in combination as to constitute an influence prolonging the depression.

(e) Under conditions of true price competition, consumers located at points of production normally tend to buy from a local mill. If its prices advance unduly, the competition of the nearest competitor-producer, having similar costs of production and distribution, at once becomes active and restores a more reasonable price. But under respondents' said pricing system the advantages which would normally accrue to buyers located near cement mills are destroyed. The buying public pays the same prices precisely as though there were no natural advantages in producing and delivering cement. Each producer charges the same delivered price as every other. The buyer located at the point of production, if he buys from the local producer, pays such producer a greater net price than any buyer located elsewhere. Under the system, no other producer will offer a lower price. Buyers can perhaps purchase from a greater number of producers than would normally quote or sell under true price competition but the conditions under which they buy are monopolistic, not competitive.

(f) Under the said pricing system, producing respondents who follow the same and who are well located with regard to raw materials, means of transportation and proximity to large consuming centers and who are well financed and ably conducted, do not avail themselves of their competitive advantages by offering competitive prices. They do not cause these advantages to be reflected in their price level. The system precludes such producers from seeking volume of business through price reduction as the result of low costs. It therefore, eliminates part of the natural incentive toward efficiency and economy. The result is a loss to the buying public.

(g) Under the formula, stated in Paragraph Five (c) hereof, the freight rate from the governing basing point, comprising the second factor in the delivered prices, is the all-rail freight rate, and that is true irrespective of whether customers could save money by buying f.o.b. pro-

ducing point and using their own or hired trucks or barges for delivery purposes. The buying public pays the same delivered prices precisely for cement at respective destinations as though there were no destinations which might be served from any mill by delivery through means cheaper than all-rail transportation. The wrong committed against the consuming public is aggrevated by the fact that producers are free under the system themselves to make actual delivery, wholly or in part, by highway or waterway at their option, thus monopolizing the benefits of these cheaper means of delivery intended to inure to the public from governmental expenditures for highways and waterways; and in fact they frequently do avail themselves of these cheaper means of delivery. If, however, genuine competitive conditions prevailed, circumstances would in many instances force competing producers to pass on to consumers the benefits of cheaper means of delivery. This the system results in greater costs to the public.

(h) Respondents have made concerted effort to avoid competition between producers and wholesaler dealers in cement in bidding upon cement for Federal Government jobs. They have brought it about that certain agencies have been constrained to curtail the practice of buying direct from producers and have resorted to more costly purchases in quantity from dealers.

(i) State and Federal Governments and municipal and quasi-municipal corporations have been unable to obtain competitive price quotations and prices. They have been obliged, as the result of respondents' said pricing system, to raise larger sums by taxation, for such public works requiring cement as have been undertaken, than would otherwise be necessary; and the public have been deprived of all benefits which would accrue from competition in price in the cement industry. State and federal laws requiring competitive bids before the award of public purchases have been thus evaded and rendered nugatory by respondents' uniform delivery price system. The State of South Dakota, finding it impossible to obtain competitive cement bids, deemed it necessary to erect a state cement mill and now operates the same. Thus an important effect of said pricing system upon public buying agencies, and through them upon the public, has been substantially to increase the cost of public works, to increase taxation, and to deplete individual incomes and thus the system has tended to lessen purchasing power and impede prosperity.

(j) Respondents through their said combination have appropriated to themselves a disproportionate share of the huge funds appropriated by Congress in aid of re-employment and the restoration of prosperity, in that their concert of action has maintained higher prices for cement than would otherwise have prevailed. Most departments and agencies of the United States expending moneys for public works have found it necessary to pay the identical delivered prices uniformly charged by cement producers. One federal agency, the Tennessee Valley Authority, was however given a reduced price by respondents when it became known that it had under consideration the federal acquisition of a cement mill. One result of respondents' combination has been to lessen the public benefit from the emergency acts of Congress.

The foregoing sub-paragraphs (a) to (j) inclusive, are not alleged exclusively or as the only unlawful effects of respondents' combination alleged in Paragraphs Four and Five. There are other effects thereof.

ANSWERS.

I. Form of Answer Used by The Cement Institute and Certain Producers.

THE CEMENT INSTITUTE and the following companies use a similar form, with variations of substance as noted in the footnotes:

Aetna
Arkansas
Ash Grove
Bessemer
Castalia
Colorado
Consolidated
Coplay
Cumberland
Dewey
Diamond
Edison
Federal
Florida
Georgia
Giant
Glens Falls
Green Bag Pa.
Green Bag W. Va.
Hawkeye
Hercules
Hermitage
Idaho‡
Keystone
Kosmos
Lawrence
Lehigh
Lone Star
Medusa
Missouri

‡ IDAHO amended answer.

Monarch
Monolith Midwest
National
Nazareth
Nebraska
North American
Northwestern States
Oklahoma
Peerless
Penn-Dixie
Pefoskey
Pittsburgh
Utah
Signal Mountain
Southern States
Spokane
Standard
Superior
Three Forks
Trinity
Union
Universal Atlas
Volunteer
Vulcanite
Wabash
West Penn
Whitehall
Wolverine

PARAGRAPH EIGHT: This respondent denies each and every allegation of Paragraph Eight.[1]

II. Second Form of Answer Used by Certain Producers.

The following companies use a similar form with variations of substance as noted in the footnotes:

Pacific
Santa Cruz
Yosemite

Answering the allegations contained in Paragraph Eight of the first count of the complaint, this respondent alleges that at no time or times whatsoever has it employed, nor is it now employing, nor has it followed, nor it is now following, the so-called multiple basing point[1] system of pricing referred to in the complaint.

This respondent is without knowledge concerning the allegations in said Paragraph Eight[2] which it has not herein specifically admitted or specifically[3] denied and, therefore, it denies such allegations and each of them.

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[1] AETNA substitutes "the allegations" for "each and every allegation." MISSOURI inserts "and of all the sub-paragraphs thereof."

[1] PACIFIC substitutes "point basing" for "basing point."

[2] PACIFIC omits "in said Paragraph Eight."

[3] PACIFIC omits "specifically."

[4] PACIFIC substitutes ", and basing its denial upon such ground, denies the same, and each and every part thereof" for "therefore it denies such allegations and each of them."

III. Third Form of Answer Used by Certain Producers.

The following companies used a similar form with variations of substance as noted in the footnotes:

Monolith
Oregon

PARAGRAPH EIGHT: Since the allegations of Paragraph Eight of the Complaint and of each sub-paragraph thereof[1] relate entirely to those respondents, if any, as may employ the so-called multiple basing point system of pricing, all as set forth and described[2] in Paragraph Five of the Complaint, and since this respondent has denied that[3] it has employed, or does now employ, said or any[4] basing point system of pricing whatsoever, this respondent states that it is without knowledge as to the facts alleged in Paragraph Eight of the Complaint, and therefore denies each and every allegation thereof.

IV. Non-Uniform Answers.

A. BEAVER answers Paragraph Eight of Count I as follows:

Paragraph Eight: This respondent has denied that it has ever employed or does now employ a multiple basing point system of pricing. It alleges that it is in free and open competition with other producers of cement who sell or attempt to sell their products in the same territory in which this respondent sells or attempts to sell its products. This respondent is without further information as to the truth or falsity of the other facts alleged in Paragraph Eight of the complaint, and therefore denies each and every allegation thereof, except the allegations thereof hereinbefore specifically admitted.

B. CALAVERAS answers Paragraph Eight of Count I as follows:

Paragraph Eight: For answer to the allegations con-

[1] OREGON omits "and of each sub-paragraph thereof."

[2] OREGON omits "and described."

[3] OREGON inserts "for approximately eight years last past."

[4] OREGON substitutes "multiple" for "or any."

tained in Paragraph Eight of Count I of said complaint, this respondent again denies that at any time or times whatsoever it has employed or is now employing, or has followed or is now following, the so-called multiple basing point system of pricing referred to in said complaint, and denies that thereunder it quotes and charges, or quotes or charges, a delivered price to any given customer, wherever said customer may be located, identical with that quoted and charged, or quoted or charged, to that customer by any other producer whatsoever.

For further answer to the allegations contained in said Paragraph Eight of Count I of said complaint, this respondent states that it is without knowledge as to any of said allegations which it has not herein specifically denied.

C. CALIFORNIA answers Paragraph Eight of Count I as follows:

Paragraph Eight: Respondent has heretofore denied, and does now again deny, that it has adopted, used, employed, continued or maintained, or is employing or using, a multiple basing point system of pricing as alleged in the complaint, or that it is a party to any combination, agreement or understanding with any of the respondents, or with any manufacturer or seller of cement, for the use of said multiple basing point system of pricing, or any other system or manner of pricing or selling cement. It denies that it has done, or is doing, anything to eliminate price competition, or that there has been any destruction or lessening or lack of competition in the price of cement within any geographical areas hereinabove described in which this respondent sells and distributes its cement. Denies that this respondent, in quoting or charging a delivered price to all or any of its customers, has done so, or does so, with the knowledge or with the mutual, or any, understanding that all or any other producers will quote or charge delivered prices identical with the prices of such respondent or with the prices of one another, or with any understanding or agreement whatever with respect thereto. Admits that the costs of producing cement vary somewhat due to natural conditions and differences in efficiency, and alleges that the same is also due to other causes. Accordingly, except as hereinabove stated, this answering respondent specifically denies each and every of the allegations contained in Para-

graph Eight of Count I of the complaint with respect to this respondent and the geographical areas (hereinabove stated) in which respondent sells or distributes the cement manufactured by it. With respect to other geographical areas, this answering respondent is without knowledge as to the allegations of said Paragraph Eight, and upon that ground specifically denies each and every of said allegations.

D. HURON answers Paragraph Eight of Count I as follows:

Paragraph Eight. This respondent denies each and every allegation in the introductory paragraph of said Paragraph Eight.

(a) As to the matters set forth in subdivision (a), this respondent admits that it ordinarily receives a price which produces for it the highest net return at its several plants when it sells to customers located within an area adjacent to said plants where the cost of delivery is the lowest. It denies that it refrains from reducing its destination prices in the territory adjacent to its several plants in order to obtain or hold its business in such territory. It denies that it reciprocally refrains from price competition and denies that it offers no price reductions as might make it impracticable for the more distant producers to obtain the business, as alleged in said subdivision (a). It denies that other respondent producers may sell in the vicinity of the plants of this respondent without encountering any destination price competition from this respondent. It denies that it "non-competitively" transports its products beyond the localities of other producers' mills into far distant points of consumption. In all other respects, except as above set forth, it denies the matters set forth in said subdivision (a).

(b) It denies the matters set forth in subdivision (b).

(c) As to the matters set forth in subdivision (c), it admits that the cost of producing cement varies somewhat due to natural conditions and differences of efficiency. It denies the remaining matters set forth in said subdivision.

(d) This respondent denies the matters set forth in subdivision (d).

(e) This respondent cannot categorically affirm or deny the several conclusions set forth in subdivision (e). It admits that it is probably true that if prices are made

at the plant, the buyer located at the point of production would obtain his cement at a lower price, because of the cost of transportation being at a minimum, than would the buyer located at a distant point and that the result would be that each producing point would be surrounded by a lower price area and the points distant from any producing point would be penalized by being compelled to pay the higher prices caused by the maximum cost of transportation. Where the producing or shipping point was distant from an area of substantial consumption, this would penalize that area. The result would be the isolation of many producing or shipping points and their elimination from the business unless the shipping plants there located were removed to the consuming area, in which case the cost of production would be greatly increased. Another result would be the much greater variety in cost of cement to the purchaser and a much greater tendency towards discrimination as between purchasers.

(f) As far as the allegations of subdivision (f) of Paragraph Eight are construed to apply to this respondent, this respondent denies the same.

(g) As to the matters set forth in subdivision (g) of Paragraph Eight and insofar as they are intended to be applied to this respondent, this respondent denies each and every allegation of said subdivision (g).

(h) On information and belief, this respondent denies the matters set forth in subdivision (h).

(i) As to the matters set forth in subdivision (i), this respondent has no knowledge and neither admits nor denies same but leaves complainant to its proof.

(j) As to the matters set forth in the first sentence of subdivision (j), this respondent denies the same. As to the matters set forth in the second sentence of subdivision (j), this respondent admits on information and belief that identical prices have frequently been charged for cement for public works. As to the remaining matters set forth in said subdivision (j), this respondent has no knowledge and therefore leaves complainant to its proof.

As to the final paragraph in said Paragraph Eight, this respondent again denying any combination as alleged shows that it knows of no "other effects thereof" and shows that obviously the allegation, if there are

such other effects, without description thereof, is entirely immaterial.

This respondent particularly shows that its method of marketing cement is not unfair to any of its competitors and does not injure any of its competitors in any way whatsoever. It denies that its method of making prices injuriously affects or tends thus to affect the business of its competitors.

E. IDAHO* answers Paragraph Eight of Count I as follows:

VIII.

Answering Paragraph Eight of Count I of the complaint the respondent Idaho Portland Cement Company denies that it has ever had any mutual understanding as to price with any other cement company.

Answering sub-section (a) of Paragraph Eight, the respondent Idaho Portland Cement Company refers again to the fact that the Multiple Basing Point System has never been used by this company, nor in the territory served by this company. Therefore, no such abuses as are set forth in this sub-section could ever have been in existence.

Answering sub-section (b) of Paragraph Eight, respondent Idaho Portland Cement Company denies that there has ever been any condition except that of true competition in the territory it has served.

Answering sub-section (c) of Paragraph Eight, the respondent Idaho Portland Cement Company again reiterates the fact that the Multiple Basing Point System is not used by this company and therefore no artificial price level has been maintained as a result of the operations of this company.

Answering sub-section (d) of Paragraph Eight, the respondent Idaho Portland Cement Company denies the allegations therein contained for the reason that prices have always been competitive in the territory served by this company.

Answering sub-section (e) of Paragraph Eight, the respondent Idaho Portland Cement Company denies that the advantages which would normally accrue to buyers located near cement mills in this territory are destroyed. The

* Original answer.

prices of Idaho Portland Cement Company, as stated before, are competitive. It is necessary to lower its net price to meet competition at distant points. This is true competition and is not based in any way upon the Multiple Basing Point System. The conditions under which buyers can purchase in the territory served by this company are truly competitive and not monopolistic as alleged in the complaint.

Answering sub-section (f) of Paragraph Eight, the respondent Idaho Portland Cement Company denies each and every allegation therein contained.

Answering sub-section (g) of Paragraph Eight, contrary to the allegations therein contained, the respondent Idaho Portland Cement Company does quote F. O. B. mill to customers over the customers' selected mode of transportation or F. O. B. destination by rail, as the customer may wish.

Answering sub-section (h) of Paragraph Eight, respondent Idaho Portland Cement Company has no knowledge of any such practices.

Answering sub-section (i) of Paragraph Eight, respondent Idaho Portland Cement Company calls attention again to the fact that prices in the territory served by this company are competitive.

Answering sub-section (j) of Paragraph Eight, the respondent Idaho Portland Cement Company has no knowledge of any such combination.

F. NORTHWESTERN answers Paragraph Eight of Count I as follows:

Effects of the Combination.

Paragraph Eight: This respondent has already denied that it now employs or has ever employed the so-called multiple basing point system of pricing, and it is without any knowledge of the allegations contained in said Paragraph Eight, and respondent therefore denies each and every allegation contained in said paragraph and subparagraphs thereof.

G. RIVERSIDE answers Paragraph Eight of Count I as follows:

Paragraph Eight: Answering Paragraph Eight, it is the understanding of this respondent that said paragraph

relates entirely to the so-called multiple basing point system of fixing prices and to such of respondents, if any, as may use or employ said basing point system. Since, as hereinabove alleged, this respondent does not use or employ said basing point system, and has not used or employed the same for approximately eight years last past, it alleges that it is without knowledge as to any of the facts in said Paragraph Eight alleged, except as is hereinafter stated.

With regard to the allegation contained in sub-paragraph (j) of said Paragraph Eight, to the effect that most departments and agencies of the United States expending moneys for public works have found it necessary to pay the identical delivered prices uniformly charged by cement producers, this respondent again alleges that it is, and has been, its fixed policy to sell to governmental agencies, whether federal, state, or local, upon the basis of a mill price, or its equivalent, when desired by such agencies, thus permitting such agencies to obtain the benefit of any lower railroad rates to which they are or may be entitled. This fact is known to the Honorable Federal Trade Commission, reference in this connection being made to the Boulder Canyon project bids by this respondent and others upon an f.o.b. cars at mill basis. Reference in this connection is had to Senate Document No. 71 hereinabove referred to, at page 68 and following.

H. SOUTHWESTERN answers Paragraph Eight of Count I as follows:

Paragraph Eight: This respondent denies each and every allegation of Paragraph Eight:

(a) This respondent denies that it is now practicing such a pricing system as is in the complaint alleged. As heretofore set forth in this answer, this respondent avers that the practice followed by it in pricing and delivering its product has varied at its three several plants, and from time to time, as the exigencies of competition required. This respondent denies that the practice followed by it, and hereinbefore and herein more particularly described, was adopted or agreed upon with any other producer of cement; and it expressly denies that it has ever at any time entered into any agreement or mutual understanding with other producers as to the prices or terms upon which it would quote its product or that it would charge therefor.

This respondent avers that its California mill, located at Victorville, California, is located in an isolated section of the Mojave Desert; that the potential business located in this area is very small; that said plant was located with special reference to the value of the material, and that this respondent, in marketing the product of said plant, is compelled to reach out into territory where cement may be sold at a reasonable profit.

To this end, this respondent maintains and owns a large fleet of modern Diesel engine trucks, and the respondent undertakes to operate its truck department as efficiently and profitably as any other department of the company, such as quarry, grinding, packing etc., and this respondent avers that by so doing, it is able to deliver its product in territory served by other mills in competition with the destination or delivered price charged by other companies.

This respondent avers that the greater portion of its product produced at its Victorville plant is marketed by trucks owned and operated by it, and that the prices charged by it are quoted on the basis of what, to the best of its knowledge, are the prices then being quoted by its competitors in the various territories the Victorville plant attempts to serve. This respondent avers that it is not now, and has not at any time been a party to the making or carrying out of any price-making formula with reference to such business, and that it is not aware of the existence of such a formula.

(b) Respondent avers that its plant at El Paso might be designated a basing point, in the sense heretofore used by it in this answer, in that it is located more than six hundred miles distant from any other producing plant; that owing to the heavy weight of cement, and the resulting factor of freight as an element of the delivered price, it markets the product of its El Paso plant in Western Texas, in New Mexico, and in Arizona, and that its prices are predicated upon the cost of production of cement, plus cost of delivery. That it naturally follows that if any other producer sells cement in the greater portion of the territory supplied from its El Paso plant, such company in order to meet the competition of this respondent's plant, must establish a price predicated upon the destination price of the El Paso plant, and that such rival plant can compete with the El Paso plant only

to the extent that it is willing to diminish its net realized.

This respondent avers that it has never been a party to any agreement or formula, understanding or undertaking of any character, with any other producer of cement to fix or regulate such price or method of sale. That it does not communicate its price to competing companies, but that such companies can approximate the mill price of this respondent by ascertaining its delivered price from dealers in various localities, and then subtracting the published freight tariff from the prices so quoted, thereby ascertaining with reasonable certainty the mill price of this respondent, as this respondent does in seeking to ascertain the mill price of competing companies.

This respondent avers that its plant at Osborn, Ohio, is not located at a point which in recent years has been characterized as a basing point, and it avers that in quoting cement for delivery from its Osborn mill, it endeavors to ascertain, as best it can, the destination prices of the companies accustomed to compete against it, and thus fixes its price at any given point of destination, if it feels that it can afford to sell in competition with its lowest competitor.

Except as herein set forth, this respondent denies each and every allegation of sub-paragraph (a) of Paragraph Eight.

This respondent denies each and every allegation of sub-paragraph (b) of Paragraph Eight.

This respondent denies each and every allegation contained in sub-paragraphs (c), (d), (e), (f), (g), (h), (i) and (j) of Paragraph Eight.

I. SUPERIOR, INC. answers Paragraph Eight of Count I as follows:

Effects of the Combination.

Paragraph Eight: Answering Paragraph Eight of Count I, this respondent alleges that none of the allegations therein contained apply to it, since, as it has already alleged, it never did and does not now employ the so-called multiple basing point system of pricing.

Further answering Paragraph Eight this respondent denies that it has ever entered into any combination, conspiracy or understanding with the other respondents, or any of them, or any other person or party with reference to following said alleged pricing system or any other pric-

ing system, and denies that the methods of this respondent have the effect of destroying competition in price.

Further answering each of the sub-paragraphs of said Paragraph Eight, this respondent admits, denies and alleges as follows:

Answering sub-paragraph (a), this respondent alleges that it is a natural economic tendency and result that each producing respondent receives its highest net return from customers located at its own place of production, all other things being equal, and alleges that the natural result of free competition is uniformity in price of the same grade of product sold and delivered at the same time and place, but denies each and all of the other allegations therein contained.

Answering sub-paragraph (b) this respondent denies each and all of the allegations therein contained.

Answering sub-paragraph (c) this respondent admits that "the costs of producing cement vary somewhat due to natural conditions and differences of efficiency", admits that it is sometimes compelled to reduce its own prices in order not to lose business to its competitors, but denies each and all of the remaining allegations therein contained.

Answering sub-paragraph (d) this respondent denies each and all of the allegations therein contained.

Answering sub-paragraph (e) this respondent admits, assuming all other things are equal, the statement contained in the first sentence of said sub-paragraph (e), but denies each and all of the other allegations therein contained except that it acknowledges that it has at times adopted a follow-the-leader policy in establishing its prices.

Answering sub-paragraph (f) this respondent alleges that since it never did, and does not now employ the so-called multiple basing point system of pricing it is without knowledge as to the allegations therein contained and therefore denies the same.

Answering sub-paragraph (g) this respondent alleges that since it never did, and does not now employ the so-called multiple basing point system of pricing it is without knowledge as to the allegations therein contained and therefore denies the same.

Answering sub-paragraph (h) this respondent denies each and all of the allegations therein contained.

Answering sub-paragraph (i) this respondent alleges that it is without knowledge as to the allegation with ref-

erence to the South Dakota State Cement Mill and therefore denies the same, and this respondent denies each and all of the other allegations contained therein.

Answering sub-paragraph (j) this respondent denies each and all of the allegations therein contained.

Further answering Paragraph Eight this respondent denies each and all of the remaining allegations of said paragraph.

PARAGRAPH NINE OF COUNT ONE. COMPLAINT.

The Public Interest.

Paragraph Nine: The combination of respondents as hereinabove averred has hindered, lessened, restricted and restrained the trade of members thereof and still hinders, lessens, restricts and restrains the same. The direct and immediate result of the said combination has been and is restraint upon interstate commerce with respect to cement manufactured by any of the producing respondents to be transported beyond the state in which the cement was made. Such confederated action exercises a power which individual action could not exercise or possess, and the necessary tendency and the direct and substantial effect of the combination are injury to the public.

The effect of respondents' combination upon the public interest has been and now is:

(1) to bring about the disappearance of prices arrived at through the play of competitive forces; and the adoption by concert of organized producers of prices calculated to preserve the more poorly located, equipped, and conducted units at the expense of the buying public;

(2) to lessen the demand for cement and the volume of public and private construction in which cement is used;

(3) correspondingly to lessen the opportunities for employment, both in the cement industry and in the construction industry;

(4) to raise the cost of public roads and projects and private structures in which cement is used and thereby either to make them less available to the public or to raise the taxes and rents by which the public pays for them;

(5) to encourage the development of excess capacity by the inducements of high prices and of fictitious freight charges obtainable by mills not located at basing points.

ANSWERS.

I. Form of Answer Used by the Cement Institute and Certain Producers.

THE CEMENT INSTITUTE and the following companies use a similar form, with variations as noted in the footnotes:

Aetna	Monarch
Alpha	Monolith
Arkansas	Monolith Midwest
Ash Grove	National
Bessemer	Nazareth
Castalia	Nebraska
Colorado	North American
Consolidated	Northwestern
Coplay	Northwestern States
Cumberland	Oklahoma
Dewey	Peerless
Diamond	Penn-Dixie
Edison	Petoskey
Federal	Pittsburgh
Florida	Utah
Georgia	Signal Mountain
Giant	Southern States
Glens Falls	Southwestern
Green Bag Pr.	Spokane
Green Bag W. Va.	Standard
Hawkeye	Superior
Hercules	Three Forks
Hermitage	Trinity
Idaho‡	Union
Keystone	Universal Atlas
Kosmos	Volunteer
Lawrence	Vulcanite
Lehigh	Wabash
Lone Star	West Penn
Medusa	Whitehall
Missouri	Wolverine

Paragraph Nine: This respondent denies each and every[1] allegation of Paragraph Nine.[2]

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[1] AETNA substitutes "the allegations" for "each and every allegation."

[2] DIAMOND inserts "and the sub-paragraphs thereof."

‡ IDAHO amended answer.

II. Second Form of Answer Used by Certain Producers.

The following companies use a similar form of answer with variations as noted in the footnotes:

Pacific
Santa Cruz
Yosemite

Answering the allegations contained in Paragraph Nine of the first count of the complaint, this respondent alleges[1] that it is not and never[2] has been a party to or member of any combination, whether or not alleged in the complaint, which has hindered, lessened, restricted or restrained, trade of members thereof, or any of them, or of any combination whatsoever, or at all.

This respondent is without knowledge concerning the allegations[3] in said Paragraph Nine[4] which it has not

III. Non-Uniform Answers.

A. BEAVER answers Paragraph Nine of Count I as follows:

Paragraph Nine: This respondent has denied that it heretofore has been or is now a party to any combination alleged to exist among it and other producers of cement or any others. It alleges it is without information as to the truth or falsity of any of the allegations of Paragraph Nine of the complaint, and therefore denies each and every allegation thereof.

B. CALAVERAS answers Paragraph Nine of Count I as follows:

Paragraph Nine: For answer to the allegations con-

[1] PACIFIC substitutes "denies" for "alleges."

[2] PACIFIC substitutes "it is or ever" for "it is not and never."

[3] PACIFIC substitutes "as to any of said allegations" for "concerning the allegations."

[4] PACIFIC omits "in said Paragraph Nine."

herein specifically admitted or specifically[5] denied and,

[5] PACIFIC omits "specifically."

therefore it denies such allegations and each of them.[6]

[6] PACIFIC substitutes "basing its denial upon such ground, denies the same, and each and every part thereof" for "therefore it denies such allegations and each of them."

tained in Paragraph Nine of Count I of said complaint, this respondent again denies that it is or ever has been a party to or a member of any combination, whether or not alleged in said complaint, which has hindered, lessened, restricted and restrained, or which has hindered, lessened, restricted or restrained, the trade of members, or of any of them, or of any combination whatsoever or at all.

For further answer to the allegations contained in said Paragraph Nine of Count I of said complaint, this respondent states that it is without knowledge as to any of said allegations which it has not herein specifically denied.

C. CALIFORNIA answers Paragraph Nine of Count I as follows:

Paragraph Nine: This answering respondent denies the existence at any time of any combination by it with any other respondents, or with any others, or the existence, to its knowledge, of any combination of respondents or any one or more of them, either as alleged in the complaint or any part thereof, or otherwise. Denies that any act or acts, or practice or practices, of this respondent has or have hindered, lessened, restricted or restrained the trade of any of respondents or any producer or manufacturer of cement, or has been, or is, in any way a restraint upon interstate commerce with respect to cement manufactured by any of the producing respondents to be transported beyond the state in which the cement was or is made. Denies the existence at any time of any confederated, or other, action by it, or that any act or acts, or practice or practices, by it has exercised, or exercises, a power which individual action could not exercise or possess, or that the necessary, or any, tendency, or the direct or substantial, or any, effect of any act or acts, or practice or practices, of this respondent has caused, or causes, any injury to the public.

Denies that the effect of any act or acts, or practice or practices, of this respondent upon the public interest has been, or now is:

(1) to bring about the disappearance of any prices arrived at through the play of competitive forces; or the adoption, by concert of organized producers, or otherwise, of any prices calculated to preserve the more poorly located, equipped or conducted units, or any thereof, at the expense of the buying public;

(2) to lessen the demand for cement or the volume of public or private construction in which cement is used;

(3) correspondingly, or otherwise, to lessen the opportunities for employment either in the cement industry or in the construction industry, or in any industry;

(4) to raise the cost of any public roads or projects, or private structures, in which cement is used, or thereby, or otherwise, either to make any of same less available to the public, or to raise the taxes or rents by which the public pays for them;

(5) to encourage the development of excess capacity by the inducement of high prices or of fictitious freight charges obtainable by any mill or mills.

Except as hereinabove stated, this answering respondent has no knowledge of any of the allegations of Paragraph Nine of said Count I of the complaint, and upon that ground denies each and every of said allegations.

D. HURON answers Paragraph Nine of Count I as follows:

Paragraph Nine. This respondent denies that any combination of respondents has hindered, lessened, restricted and restrained the trade of said respondents and still hinders, lessens, restricts and restrains the same. It denies that there is any combination as alleged and denies that any such combination has been and is restraint upon any interstate commerce as alleged in said Paragraph Nine. It denies any confederated action by the Institute or by the various respondents and denies that the necessary tendency thereof is injurious to the public.

(1) Again denying that there is a combination as alleged, it denies that any such combination has brought about a disappearance of various prices arrived at through the play of competitive forces and the adoption by concert of prices calculated to preserve the more poorly located, equipped and conducted units at the expense of the buying public, all as alleged in subdivision (1).

(2) It denies that there has been any agreement, combination or activity on the part of this respondent which has lessened the demand for cement and the volume of public and private construction in which cement is used, as alleged in subdivision (2).

(3) It denies that there has been any agreement, combination or activity on the part of this respondent with

the result that opportunities for employment have been lessened, both in the cement industry and in the construction industry, as alleged in subdivision (3).

(4). It denies that there has been any agreement, combination or activity on the part of this respondent with the result that the cost of public roads, projects and private structures in which cement is used has been raised by such activities so that they would be made less available to the public or so that taxes or rents for which the public pays would be raised, all as alleged in subdivision (4).

(5) It denies that there has been any agreement, combination or activity on the part of this respondent which has caused the development of excess capacity by the inducements of high prices and fictitious freight charges obtainable by mills not located at "basing points," as alleged in subdivision (5).

E. IDAHO* answers Paragraph Nine of Count I as follows:

IX.

Paragraph Nine: Answering Paragraph Nine of Count I of the complaint, respondent Idaho Portland Cement Company denies each and every allegation therein contained as far as the territory is concerned which is served by this company.

F. OREGON answers Paragraph Nine of Count I as follows:

Paragraph Nine: Having denied any combination as alleged in the Complaint, or any other combination, this respondent now denies each and every allegation of Paragraph Nine of the Complaint.

G. RIVERSIDE answer Paragraph Nine of Count I as follows:

Paragraph Nine: It is without knowledge of the facts, or any of them, in Paragraph Nine alleged, except the following: It denies, so far as it is concerned, the existence of any combination of respondents, or any of them, as in said Paragraph Nine or in said Count, or in said complaint or any Count thereof, the existence of which said combination is attempted to be averred or set forth. It likewise denies that it is, or that it ever was, a party to said or any

* Original answer.

such combination. It further denies that any act or practice of this respondent has hindered, lessened, restricted, or restrained the trade of any cement producer, or that it still hinders, lessens, restricts, or restrains the same. It denies that the direct or immediate result of any act or practice of this respondent has been or that it is restraint upon interstate commerce with respect to cement manufactured by any of the producing respondents, including this respondent, to be transported beyond the state in which the cement is made. It denies that any act or practice of this respondent exercise a power which individual action could not exercise or possess, and it likewise denies that the necessary or any tendency, or the direct or substantial or any effect of any act or practice of this respondent, is injury to the public.

It denies that the effect of any act or practice of this respondent upon the public interest has been or that it now is:

(1) To bring about the disappearance of prices arrived at through the play of competitive forces; or the adoption by concert of organized producers, or otherwise, of prices calculated to preserve the more poorly located, equipped, or conducted units at the expense of the buying public;

(2) To lessen the demand for cement or the volume of private or public construction in which cement is used;

(3) Correspondingly to lessen the opportunities for employment, either in the cement industry or in the construction industry, or in any industry;

(4) To raise the cost of public roads or projects or private or other structures in which cement is used, or thereby either to make them less available to the public or to raise the taxes or rents by which the public pays for them;

(5) To encourage the development of excess capacity by the inducements of high prices or of fictitious freight charges obtainable by mills not located at basing points.

H. SUPERIOR, INC. answers Paragraph Nine of Count I as follows:

The Public Interest.

Paragraph Nine: Answering Paragraph Nine of Count I, this respondent denies each and all of the allegations contained therein.

PARAGRAPH TEN OF COUNT ONE.

COMPLAINT.

Paragraph Ten: The Federal Trade Commission further alleges that the public interest directly involved herein and set out more particularly in the preceding paragraphs is a part of the larger public interest, within the meaning of the Federal Trade Commission Act, in maintaining the natural regulatory forces of free competition in industry generally. The economic tendency of the respondents' combination upon the public interest, as thus broadly stated is to lend encouragement to similar impairment of competition in other industries, the effect of which upon the buying power of consumers, the employment of labor, the opportunities for independence in business, the necessity that the government undertake by regulation to protect the public interest, and the fluctuations of national prosperity, must increase in severity as the extent of competition is reduced. The leaving to private industry of monopolistic special privileges and franchises is at the expense of the purchasing power of the masses of the country, and results inevitably in reducing the opportunity freely to enter industry and commerce.

ANSWERS.

I. Form of Answer Used by The Cement Institute and Certain Producers.

THE CEMENT INSTITUTE and the following companies use a similar form, with variations of substance as noted in the footnotes:

Aetna	Diamond
Alpha	Edison
Arkansas	Federal
Ash Grove	Florida
Bessemer	Georgia
Castalia	Giant
Colorado	Glens Falls
Consolidated	Green Bag Pa.
Coplay	Green Bag W. Va.
Cumberland	Hawkeye
Dewey	Hercules

Hermitage
Idaho‡
Keystone
Kosmos
Lawrence
Lehigh
Lone Star
Medusa
Missouri
Monarch
Monolith
Monolith Midwest
National
Nazareth
Nebraska
North American
Northwestern
Northwestern States
Oklahoma
Peerless
Penn-Dixie
Petoskey
Pittsburgh
Utah
Signal Mountain
Southern States
Southwestern
Spokane
Standard
Superior
Superior, Inc.
Three Forks
Trinity
Union
Universal Atlas
Volunteer
Vulcanite
Wabash
West Penn
Whitehall
Wolverine

Paragrapl Ten: This respondent denies each and every allegation[1] of Paragraph Ten.

II. Second Form of Answer Used by Certain Producers.

The following companies use the following form of answer to Paragraph Ten of Count I:

Santa Cruz
Yosemite

X.

Answering the allegations contained in Paragraph Ten of the first count of the complaint, this respondent alleges that no act or practice of this respondent involves the public interest either as a part of the larger public interest, within the meaning of the Federal Trade Commission Act, in maintaining the natural regulatory forces of free com-

‡ IDAHO amended answer.

[1] DIAMOND and AETNA substitute "the allegations" for "each and every allegation."

petition in industry generally or otherwise, or at all; that it has not, either alone or with any respondent or respondents, or with any other person, firm or corporation whatsoever, done, nor is it doing any act or acts, thing or things contrary or inimical to or in violation of the Federal Trade Commission Act, or any other act or acts of Congress; that it has not done and is not doing any act or thing, whether or not alleged in said complaint, contrary or inimical to the maintaining of the natural regulatory forces of free competition in industry generally or in the cement industry specifically, or contrary or inimical to the public welfare in any aspect or decree whatsoever, or at all, whether it be the alleged larger public interest referred to in said Paragraph Ten, or a part of the said alleged larger public interest; that the public interest within the meaning of the Federal Trade Commission Act is not directly or at all involved herein, whether it be the said alleged larger public interest, or any part or specific portion thereof, and whether it be set out particularly or otherwise in any paragraph or paragraphs of the complaint herein; that respondent is not a member of or a party to any combination, whether alleged in said complaint or not, and whether unlawful or not; that it does not, either alone or in concert with any respondent or respondents, employ or use the multiple basing point system referred to and described in said complaint.

This respondent is without knowledge concerning the allegations in said Paragraph Ten which it has not herein specifically admitted or specifically denied, and therefore it denies such allegations and each of them.

III. Non-Uniform Answers.

A. BEAVER answers Paragraph Ten of Count I as follows:

Paragraph Ten: This respondent has denied that it heretofore has been or is now a party to any combination alleged to exist among it and other producers of cement or any others. It alleges it is without information as to the truth or falsity of any of the allegations of Paragraph Ten of the complaint, and therefore denies each and every allegation thereof.

B. CALAVERAS answers Paragraph Ten of Count I as follows:

Paragraph Ten: For answer to the allegations contained in Paragraph Ten of Count I of said complaint, this respondent again denies that it is or ever has been a party to or a member of any combination, which has hindered, lessened, restricted and restrained, or hindered or lessened or restricted or restrained, competition in the cement industry, or the trade of members, or any of them, in the cement industry, or of any combination whatsoever or at all,

For further answer to the allegations contained in said Paragraph Ten of Count I of said complaint, this respondent states that it is without knowledge as to any of said allegations which it has not herein specifically denied.

C. CALIFORNIA answers Paragraph Ten of Count I as follows:

Paragraph Ten: Denies that any of the acts or practices of this answering respondent has involved, or does involve, directly or otherwise, the public interest, either as a part of the larger public interest within the meaning of the Federal Trade Commission Act in maintaining the natural regulatory forces of free competition in industry generally, or otherwise, or at all. Denies that the economic, or any, tendency of any of the acts or practices of this respondent upon the public interest as broadly alleged in the complaint, or otherwise, or at all, is to lend encouragement to similar, or any, impairment of competition in any other industries or industry, or that any of the acts and practices of this respondent has had any effect upon the buying power of consumers, employment of labor and opportunities for independence in business, the necessity that the government undertake by regulation to protect the public interest, or the fluctuations of national prosperity, or that any such alleged effect must increase in severity as the extent of competition is reduced. Except as hereinabove stated, this answering respondent has no knowledge of the allegations of Paragraph Ten of Count I of the complaint, and upon that ground denies each and every of same.

D. HURON answers Paragraph Ten of Count I as follows:

Paragraph Ten. It denies each and all the matters set forth in Paragraph Ten in all but the last sentence thereof. As to the last sentence thereof, it neither admits nor denies the same for lack of information as to its meaning. It admits that monopolistic special privileges and franchises are generally injurious whether such privileges and franchises are exercised by private industry or by the authority of a government body.

E. IDAHO* answers Paragraph Ten of Count I as follows.

X.

Answering Paragraph Ten of Count I of the complaint, the respondent Idaho Portland Cement Company denies that it has been a party to any such impairment of the public interest.

F. OREGON answers Paragraph Ten of Count I as follows:

Paragraph Ten: Having denied any combination as alleged in the Complaint, or any other combination, this respondent now denies each and every allegation of Paragraph Ten of the Complaint.

G. PACIFIC answers Paragraph Ten of Count I as follows:

Answering the allegations contained in paragraph X of said Count I, this respondent denies each and every, all and singular, the allegations contained therein, and particularly denies that the public interest is involved, directly or otherwise, as alleged in said complaint, and further denies that this respondent is or ever has been a member of or a party to the alleged combination as set forth in said complaint or any combination, or that any of the alleged injuries alleged in said complaint resulted from any act or acts of said respondent.

H. RIVERSIDE answers Paragraph Ten of Count I as follows:

Paragraph Ten: It is without knowledge of the facts, or any of them, in Paragraph Ten alleged, except the

* Original answer.

following: It denies that any act or practice of this respondent involves the public interest, either as a part of the larger public interest, within the meaning of the Federal Trade Commission Act, in maintaining the natural regulatory forces of free competition in industry generally or otherwise or at all. It likewise denies that the economic or any tendency of any act or practice of this respondent upon the public interest, as thus broadly stated, or otherwise or at all, is to lend encouragement to similar or any impairment of competition in other industries, or that the effect of which upon the buying power of consumers, or the employment of labor, or the opportunities for independence in business, or the necessity that the government undertake by regulation to protect the public interest, or the fluctuations of national prosperity, must increase in severity as the extent of competition is reduced.

PARAGRAPH ELEVEN OF COUNT ONE.
COMPLAINT.

Violation of the Federal Trade Commission Act.

Paragraph Eleven: The acts and practices in this Count set forth are all to the prejudice of the public; they have a substantial and dangerous tendency to hinder, lessen, restrict and restrain, and actually have unduly, directly and substantially, hindered, frustrated, lessened, restricted and restrained, competition in interstate commerce in cement; they have increased the price of cement to the buying public. The said acts and practices constitute unfair methods of competition within the intent and meaning of the aforesaid Federal Trade Commission Act.

ANSWERS.

I. Form of Answer Used by The Cement Institute and Certain Producers.

THE CEMENT INSTITUTE and the following companies use a similar form, with variations of substance as noted in the footnotes:

Aetna	Ash Grove
Alpha	Beaver
Arkansas	Bessemer

Castalia
Colorado
Consolidated
Coplay
Cumberland
Dewey
Diamond
Edison
Federal
Florida
Georgia
Giant
Glens Falls
Green Bag Pa.
Green Bag W. Va.
Hawkeye
Hercules
Hermitage
Huron
Idaho‡
Keystone
Kosmos
Lawrence
Lehigh
Lone Star
Medusa
Missouri
Monarch
Monolith
Monolith Midwest
National
Nazareth
Nebraska
North American
Northwestern
Northwestern States
Oklahoma
Oregon
Peerless
Penn-Dixie
Petoskey
Pittsburgh
Utah
Signal Mountain
Southern States
Southwestern
Spokane
Standard
Superior
Three Forks
Trinity
Union
Universal Atlas
Volunteer
Vulcanite
Wabash
West Penn
Whitehall
Wolverine

Paragraph Eleven. This respondent denies each and every allegation[1] of Paragraph Eleven.

Except as hereinabove set forth, this respondent denies each and every allegation of Count I.[2]

II. Second Form of Answer Used by Certain Producers.

The following companies use the following form:

SANTA CRUZ
YOSEMITE

‡ IDAHO amended answer.

[1] HURON substitutes "all the matters set forth in."
AETNA substitutes "the allegations" for each and every "allegation".

[2] AETNA, BEAVER, MONOLITH, NORTHWESTERN, and OREGON omit the entire preceding paragraph.

XI.

Answering the allegations contained in Paragraph Eleven of the first count of the complaint, this respondent alleges that no act or practice of this respondent, whether or not set forth in the first count of said complaint, is or has been to the prejudice of the public; that none of its acts or practices has a substantial or dangerous or any tendency to hinder, lessen, restrict or restrain, or actually has unduly or directly or substantially hindered, frustrated, lessened or restrained interstate commerce in cement, or has increased the price of cement to the buying public, or constitute or constitutes unfair methods of competition, or an unfair method of competition, within the intent of meaning of the aforesaid Federal Trade Commission Act, or otherwise, or at all.

This respondent is without knowledge concerning the allegations in said Paragraph Eleven of the complaint which it has not herein specifically admitted or specifically denied and therefore it denies such allegations and each of them.

III. Non-Uniform Answers.

A. CALAVERAS answers Paragraph Eleven of Count I as follows:

Paragraph Eleven: For answer to the allegations contained in Paragraph Eleven of Count I of said complaint, this respondent denies that any act or acts, practice or practices, of this respondent is or has been to the prejudice of the public, or has a substantial and dangerous, or a substantial or dangerous, or any tendency to hinder, lessen, restrict and restrain, or to hinder or lessen or restrict or restrain, and actually has unduly, directly and substantially, or actually has unduly or directly or substantially, or at all, hindered, frustrated, lessened, restricted and restrained, or hindered or frustrated or lessened or restricted or restrained, competition in interstate commerce in cement, or has increased the price of cement to the buying public, or that said alleged acts and practices, or any act or acts, or practice or practices, or any of them, of this respondent constitute or constitutes unfair methods of competition or an unfair method of competition within the intent and mean-

ing, or within the intent or meaning, of the aforesaid Federal Trade Commission Act or otherwise or at all.

For further answer to the allegations contained in said Paragraph Eleven of Count I of said complaint, this respondent states that it is without knowledge as to any of said allegations which it has not herein specifically denied.

B. CALIFORNIA answers Paragraph Eleven of Count I as follows:

Paragraph Eleven: This answering respondent denies that any of its acts or practices is to the prejudice of the public or has or have a substantial or dangerous, or any, tendency to hinder, lessen, restrict or restrain, or actually has or have unduly, directly or substantially, or otherwise, hindered, frustrated, lessened, restricted or restrained competition in interstate commerce in cement, or has or have increased the price of cement to the buying public, or constitutes or constitute unfair methods of competition within the intent or meaning of the aforesaid Federal Trade Commission Act, or otherwise, or at all. Except as hereinabove stated, this answering respondent has no knowledge of the allegations of Paragraph Eleven of Count I of the complaint, and upon that ground denies each and every of the allegations thereof.

C. IDAHO* answers Paragraph Eleven of Count I as follows:

Paragraph Eleven: Answering Paragraph Eleven of Count I, the respondent Idaho Portland Cement Company denies that it has ever engaged in acts of unfair competition as expressed by the allegations therein contained.

D. PACIFIC answers Paragraph Eleven of Count I as follows:

Answering the allegations contained in paragraph XI of said Count I, this respondent denies that any of its acts or practices, either as set forth in Count I or otherwise in said complaint, are or have been to the prejudice of the public or have or ever had a substantial or dangerous tendency to hinder or lessen or restrict or restrain competition in interstate commerce in cement, or that said acts or practices or any thereof have actually unduly or

* Original answer.

directly or substantially hindered or frustrated or lessened or restricted or restrained said competition, or do any of said things. This respondent further denies that any acts or practices of this respondent or any thereof has increased or does increase the price of cement to the buying public in any unlawful manner or that any of the acts or practices of this respondent constitute, or have constituted unfair methods of competition within the intent or meaning of any law whatsoever.

E. RIVERSIDE answers Paragraph Eleven of Count I as follows:

Paragraph Eleven: It is without knowledge as to the facts, or any of them, in said Paragraph Eleven alleged except the following: It denies that any act or practice of this respondent is to the prejudice of the public, or that any such act or practice has a substantial or dangerous tendency, or any tendency, to hinder, lessen, restrict, or restrain, or that any such act or practice actually has unduly, directly, or substantially, or otherwise, hindered, frustrated, lessened, restricted, or restrained competition in interstate commerce in cement, or that any such act or practice of this respondent has increased the price of cement to the buying public, and likewise denies that any act or practice of this respondent constitutes an unfair method or methods of competition, either within the intent or meaning of the aforesaid Federal Trade Commission Act or otherwise, or at all.

F. SUPERIOR, INC. answers Paragraph Eleven of Count I as follows:

Paragraph Eleven: Answering Paragraph Eleven of Count I, this respondent denies each and all of the allegations therein contained.

This respondent further says that none of the acts of this respondent constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of the Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" approved September 26, 1914, and commonly known as the Federal Trade Commission Act.

PARAGRAPH ONE TO FIVE INCLUSIVE OF COUNT TWO.

COMPLAINT.

Count II.

The Charge Under the Clayton Act.

Paragraphs One to Five, Inclusive: As Paragraphs One to Five, inclusive, of Count II of this complaint the Commission hereby incorporates Paragraphs One to Five, inclusive, of Count I to precisely the same extent as if each and all of them were set forth in full and repeated verbatim in this Count.

ANSWERS.

I. Form of Answer Used by The Cement Institute and Certain Producers.

THE CEMENT INSTITUTE and the following companies use a similar form, with variations of substance as noted in the footnotes:

Alpha	Hercules
Arkansas	Hermitage
Ash Grove	Idaho‡
Beaver	Keystone
Bessemer	Kosmos
Castalia	Lawrence
Colorado	Lehigh
Consolidated	Lone Star
Coplay	Medusa
Cumberland	Monarch
Dewey	Monolith Midwest
Edison	National
Federal	Nazareth
Florida	Nebraska
Georgia	North American
Giant	Northwestern States
Glens Falls	Oklahoma
Green Bag Pa.	Oregon
Green Bag W. Va.	Peerless
Hawkeye	Petoskey

‡ IDAHO amended answer.

Pittsburgh
Utah
Signal Mountain
Southern States
Southwestern
Spokane
Standard
Superior
Three Forks
Trinity
Union
Universal Atlas
Volunteer
Vulcanite
Wabash
West Penn
Whitehall
Wolverine

ANSWER TO COUNT II OF THE COMPLAINT.

Paragraphs One to Five, Inclusive: As Paragraphs One to Five, inclusive, of this answer to Count II of the complaint, this respondent hereby incorporates the answers which it has given above to Paragraphs One to Five, inclusive, of Count I.

II. Non-Uniform Answers.

A. AETNA answers Paragraphs One to Five of Count II as follows:

Count II.

The Charge Under the Clayton Act.

Paragraphs One to Five, inclusive: This respondent repeats its answer to Paragraphs One to Five inclusive of Count I of the Complaint in the same manner and with like effect as if the answer thereto were here repeated.

B. CALAVERAS answers Paragraphs One to Five of Count II as follows:

Answer to Count II of the Complaint.

Paragraphs One to Five, inclusive: This respondent at this point hereby refers to and incorporates herein by this reference, as fully and to the same extent as if here again set forth at length, its answers to Paragraphs One to Five, inclusive, of Count I of said complaint.

C. CALIFORNIA answers Paragraphs One to Five of Count II as follows:

Answer to Count II.

Paragraphs One to Five, inclusive: As to Paragraphs One to Five, inclusive, of Count II of the complaint, this answering respondent hereby incorporates and adopts by reference to Paragraphs One to Five, inclusive, of its answer to Count I, with the same force and effect as if repeated in its answer to Count II.

D. DIAMOND answers Paragraphs One to Five of Count II as follows:

Count II.

"The Charge Under the Clayton Act."

Paragraphs One to Five, inclusive: For answer to Paragraphs 1 to 5 inclusive of Count II of the complaint this respondent hereby incorporates, in whole, Paragraphs 1 to 5 inclusive in its answer to said paragraphs under Count I hereof to precisely the same extent as if each and all of them were set forth in full and repeated verbatim in this Count.

E. HURON answers Paragraphs One to Five of Count II as follows:

Count II.

Paragraphs One to Five, inclusive: For answer to Paragraphs One to Five inclusive of Count II of said complaint, this respondent incorporates herein Paragraphs One to Five inclusive of this, its Answer, to precisely the extent as if each and all of same were here set forth in full and repeated verbatim, and it makes the same answer to Paragraphs One to Five inclusive in Count II as it made to Paragraphs One to Five inclusive of said Count I.

F. IDAHO* answers Paragraphs One to Five of Count II as follows:

Count II.

Answering Paragraphs One to Five, inclusive, of Count II, the respondent Idaho Portland Cement Company hereby incorporates its answers to Paragraphs One to Five, inclusive, of Count I to precisely the same extent

* Original answer.

as if each and all of them were set forth in full and repeated verbatim in this Count.

G. MONOLITH answers Paragraphs One to Five of Count II as follows:

Answer to Count II.

Paragraphs One to Five, inclusive: Answering the allegations contained in Paragraphs One to Five, inclusive, of Count II of the Complaint, this respondent, by reference thereto, incorporates Paragraphs One to Five, inclusive, of its answer to Paragraphs One to Five, inclusive, of Count I of the Complaint, as fully and to the same effect as if said Paragraphs One to Five, inclusive, of this respondent's answer to Paragraphs One to Five, inclusive, of Count I of the Complaint were here set out at large.

H. NORTHWESTERN answers Paragraphs One to Five of Count II as follows:

Count II.

The Charge Under the Clayton Act.

Paragraphs One to Five, inclusive: By way of answer to Paragraphs One to Five inclusive of Count II, respondent refers to and incorporates herein by reference thereto, its answer herein made to Paragraphs One to Five, inclusive, of Count I.

I. PACIFIC answers Paragraphs One to Five of Count II as follows:

Answer to Count II.

I.

Answering the allegations contained in Paragraphs I to V inclusive of Count II of said complaint, this respondent by reference thereto incorporates herein Paragraphs I to III, inclusive, of its answer to Paragraphs II, IV, and V of Count I of said complaint as fully as if said Paragraphs I to III, inclusive, of this respondent's answer to Count I of said complaint were herein set forth at length.

J. PENN-DIXIE answers Paragraphs One to Five of Count II as follows:

Answer to Count II of the Complaint.

12. This respondent repeats the denials and averments hereinbefore made with respect to the allegations in the complaint which are incorporated in Paragraphs One to Five, inclusive, of Count II thereof.

K. RIVERSIDE answers Paragraphs One to Five of Count II as follows:

Answer to Count II.

Paragraphs One to Five, Inclusive: As its answer to Paragraphs One to Five, inclusive, of Count II of the complaint, this respondent hereby incorporates Paragraphs One to Five, inclusive, of its answer to Count I, to precisely the same extent as if each and all of them were set forth in full and repeated verbatim in its answer to this Count.

L. SANTA CRUZ answers Paragraphs One to Five of Count II as follows:

Answer to Count II.

I.

Answering the allegations contained in Paragraphs One to Five, inclusive, of the second count of the complaint, this respondent, by reference thereto, incorporates Paragraphs One to Five, inclusive, of its answer to Paragraphs One to Five, inclusive, of Count I of the said complaint as fully and to the same effects as if said Paragraphs One to Five, inclusive, of this respondent's answer to Paragraphs One to Five, inclusive of Count I of the complaint were here set out at large.

M. SUPERIOR, INC. answers Paragraphs One to Five of Count II as follows:

Answers to Count II of the Complaint.

The Charge Under the Clayton Act.

Paragraphs One to Five, Inclusive: Answering Paragraphs One to Five inclusive of Count II, which are identical with Paragraphs One to Five inclusive of Count I, this respondent hereby incorporates Paragraphs One to Five inclusive of its answer to Count I to precisely the same extent as if each and all of them were set forth in full and repeated verbatim in this answer to Count II.

N. YOSEMITE answers Paragraphs One to Five of Count II as follows:

Answer to Count II.

I.

Answering the allegations contained in Paragraphs One to Five, inclusive, of the second count of the complaint, this respondent, by reference thereto, incorporates Paragraphs One to Five, inclusive, of its answer to Paragraphs One to Five, inclusive, of Count I of the said complaint as fully and to the same effect as if said Paragraphs One to Five, inclusive, of this respondent's answer to Paragraphs One to Five, inclusive, of Count I of the complaint were here set out at large.

PARAGRAPH SIX OF COUNT II. COMPLAINT.

The Practice of Discrimination Generally Considered.

Paragraph Six: Delivered prices made under the formula set forth in Paragraph Five (b) hereof are not the actual prices received by producing respondents. This is for the reason that such delivered prices include not only the price of the cement but the price of its transportation. In order to derive the true price received, the price actually paid to the carrier for transportation of the cement to the buyer must be deducted from the delivered price. Sales by producing respondents not located at basing points, and

also sales by producing respondents located at basing points to customers outside the territory governed by the basing point where the seller is located, are made at almost as many true prices as there are customers' locations. The respective producing respondents thus discriminate in price in substantial amounts among their customers. These discriminations are made with the purpose to prevent, lessen and destroy competition in price in commerce on the part of each producing respondent, which grants the discrimination, with all other such producing respondents. It is only through the said described discrimination that respondents are thus enabled to eliminate price competition.

ANSWERS.

I. Form of Answer Used by The Cement Institute and Certain Producers.

THE CEMENT INSTITUTE and the following companies use a similar form, with variations of substance as noted in the footnotes:

Alpha	Idaho‡
Arkansas	Keystone
Ash Grove	Kosmos
Bessemer	Lawrence
Castalia	Lehigh
Colorado	Lone Star
Consolidated	Medusa
Coplay	Missouri
Cumberland	Monarch
Dewey	Monolith Midwest
Diamond	National
Edison	Nazareth
Federal	Nebraska
Florida	North American
Georgia	Northwestern States
Giant	Oklahoma
Glens Falls	Peerless
Green Bag Pa.	Petoskey
Green Bag W. Va.	Pittsburgh
Hawkeye	Utah
Hercules	Signal Mountain
Hermitage	Southern States

‡ IDAHO amended answer.

Southwestern	Universal Atlas
Spokane	Volunteer
Standard	Vulcanite
Superior	Wabash
Three Forks	West Penn
Trinity	Whitehall
Union	Wolverine

Paragraph Six: This respondent denies that destination[1] prices are not the actual prices within the meaning of the Clayton Act, as amended by the Robinson Patman Act, and further denies that[2] price discrimination can be determined or measured in terms of the amount which the seller[3] nets in different transactions. This respondent denies that it has participated in any price discrimination or that it has done anything tending to eliminate price competition. It denies each and every allegation of Paragraph Six.[4]

II. Non-Uniform Answers.

A. AETNA answers Paragraph Six of Count II as follows:

Paragraph Six: This respondent denies the allegations contained in Paragraph Six of the Complaint.

B. BEAVER answers Paragraph Six of Count II as follows:

Paragraph Six: This respondent admits that delivered prices received by it include, among other factors, the cost of transportation. This respondent denies that it discrim-

[1] THE CEMENT INSTITUTE and VOLUNTEER substitute "delivered" for "destination."

[2] CONSOLIDATED, FLORIDA, SIGNAL MOUNTAIN and TRINITY insert "unlawful" before "price discrimination."

[3] CONSOLIDATED, FLORIDA, SIGNAL MOUNTAIN and TRINITY substitute "realizes at his mill in various transactions when the product is delivered to the purchaser by the seller at the point of use." for "nets in different transactions."

ARKANSAS, COLORADO, NEBRASKA, OKLAHOMA, THREE FORKS and UNION insert "jointly and severally" before "deny."

[4] DIAMOND substitutes "It denies that there is a discrimination by this respondent in substantial amounts among its customers, and it denies that it has been party to any discrimination or participated in any act or practice tending to eliminate price or other competition. It denies all allegations of Paragraph Six not herein specifically admitted or denied." for the last full sentence of the form answer.

inates in price among its customers substantially or at all. This respondent has denied that it has heretofore employed or now employs the formula set forth in sub-paragraph (b) of said Paragraph Five. Except as hereinbefore specifically admitted or denied this respondent is without information as to the truth or falsity of the other facts or matters alleged in Paragraph Six and therefore denies each and every allegation thereof, except the allegations thereof hereinbefore specifically admitted.

C. CALAVERAS answers Paragraph Six of Count II as follows:

Paragraph Six: For answer to the allegations contained in Paragraph Six of Count II of said complaint, this respondent denies that its prices, whether delivered prices or not, or any of them, are or were made under the alleged formula set forth in Paragraph Five (b) of the second count of said complaint; denies that the prices, or any of them, received by this respondent are not the actual prices to respondent's customers for cement produced and sold by this respondent; denies that it uses or has ever used the said multiple basing point system of pricing; and denies that this repondent discriminates in price in substantial or any amounts among its customers.

For further answer to the allegations contained in said Paragraph Six of Count II of said complaint, this respondent states that it is without knowledge as to any of said allegations which it has not herein specifically denied.

D. CALIFORNIA answers Paragraph Six of Count II as follows:

Paragraph Six: This answering respondent denies that it has in the past employed, or does now employ, the so-called multiple basing point system of pricing as set forth in Paragraph Five of Count I of the complaint, and denies that it has employed, or now employs, the so-called formula set forth in subparagraph (b) of said Paragraph Five. Accordingly, this answering respondent specifically denies each and every allegation contained in Paragraph Six of Count II of the complaint. In this connection, respondent here refers to and incorporates the affirmative allegations of Paragraph Five of its answer to Count I of the complaint, with the same force and effect as if repeated herein. Respondent's destination prices, after deducting actual railroad transportation costs, for all of its cement of like grade and quality shipped by it to points outside of the

State of California, as aforesaid, have been the same since the effective date of the Robinson-Patman Act, except its destination prices at certain points in the eastern portion of Arizona referred to in the preceding sentence of this paragraph, where a slight reduction was and is necessary in order for this respondent in good faith to meet equally low prices of its competitors. None of these exceptions was made with the purpose of preventing, injuring, destroying or lessening competition in price, nor was the effect thereof substantially, or at all, to prevent, injure, destroy or lessen competition. Respondent denies that it has made or participated in any price discrimination, or that it has done anything to eliminate price competition.

E. HURON answers Paragraph Six of Count II as follows:

Paragraph Six. Respondent denies the allegations set forth in Paragraph Six of said Count II. It shows that the price paid by the purchaser for the cement on its delivery is the actual price received by the respondent whether such price is made under a formula as described by the complainant in its Paragraph Five (b) or whether it is determined in any other manner. Such actual price is, however, not the net return received by this respondent. The net return is the actual price less the lost to this respondent of the transportation and delivery to the purchaser. Discrimination between purchasers similarly situated and entitled to non-discriminatory prices is porduced by sales at different prices and not by sales which may net to the producer different net returns. The making of identical destination prices, resulting in different net returns, to purchasers entitled to non-discriminatory prices does not discriminate as between such purchasers. The making of the same so-called plant price at point of shipment to all purchasers would in many cases produce, by reason of any variance in the cost of delivery a discriminatory price as between purchasers entitled to non-discriminatory prices. Respondent denies specifically that it "discriminates in price on substantial amounts among" its customers and it denies it so discriminates in any amount. Respondent denies that it is only through "the said described discrimination" that this respondent or any of the respondents are enabled to eliminate price competition and it denies that it does eliminate price competition.

F. IDAHO* answers Paragraph Six of Count II as follows:

VI.

Answering Paragraph Six of Count II, the respondent Idaho Portland Cement Company denies that any such formula as set forth in Paragraph Five of Counts I and II has ever been used by producing cement companies in the territory served by this company. Prices, so far as it knows, are truly competitive in all the territory which this company serves and there are no such discriminations as are alleged in this paragraph which would prevent, lessen, or destroy competition in any manner whatsoever.

G. MONOLITH answers Paragraph Six of Count II as follows:

Paragraph Six: Since this respondent has denied each and every allegation of Paragraphs Four and Five of the Complaint and has averred that it has not employed, and does not now employ, the so-called multiple basing point system of pricing referred to and described in Paragraph Five of the Complaint, or any basing point system of pricing whatsoever, this carries with it a denial that it has employed or does not employ the so-called formula set forth in subparagraph (b) of said Paragraph Five of the Complaint. This respondent therefore states that it is without knowledge as to the facts alleged in Paragraph Six of the Complaint and therefore denies each and every allegation thereof.

H. NORTHWESTERN answers Paragraph Six of Count II as follows:

Paragraph Six: Since respondent has denied that it has employed or now employs the so-called multiple basing point system of pricing as set forth in Paragraph Five of the Complaint, this carries with it a denial that it has employed or now employs the so-called formula set forth in Sub-Paragraph (b) of said Paragraph Five. Respondent therefore states that it is without knowledge as to the facts alleged in Paragraph Six, and denies each and every allegation therein contained. Respondent particularly denies that it has ever discriminated in price among its customers, or that it has done anything to prevent, lessen, or destroy competition in price.

* Original answer.

I. OREGON answers Paragraph Six of Count II as follows:

Paragraph Six: Since this respondent has denied that for approximately eight years last past it has employed or does now employ the so-called multiple basing point system of pricing as set forth in Paragraph Five of the Complaint, this carries with it a denial that it has employed or does now employ the so-called formula set forth in Sub-Paragraph (b) of said Paragraph Five. This respondent therefore states that it is without knowledge as to the facts alleged in Paragraph Six of the Complaint and denies each and every allegation thereof.

J. The PACIFIC answers Paragraph Six of Count II as follows:

II.

Answering the allegations contained in paragraph VI of Count II of said complaint, this respondent denies, as hereinabove set forth in answer to various paragraphs of Count I, that it uses, or has used, the so-called multiple point basing system of pricing or the formula referred to in said paragraph VI of Count II, and it further alleges that it is without information as to any of the facts set forth in said paragraph VI, and basing its denial upon such ground, denies the same, and each and every part thereof.

K. PENN DIXIE answers Paragraph Six of Count II as follows:

13. This respondent denies each and every allegation contained in Paragraph Six thereof in so far as such allegations refer to it. It is without knowledge as to the truth or accuracy of the allegations therein contained respecting the corporate respondents other than itself.

L. RIVERSIDE answers Paragraph Six of Count II as follows:

Paragraph Six: Answering Paragraph Six, this respondent alleges that since, as earlier set forth herein, it uses neither the so-called multiple basing point system nor the formula referred to in said Paragraph Six, it is without knowledge as to any of the facts in said Paragraph Six alleged.

M. SANTA CRUZ answers Paragraph Six of Count II as follows:

VI.

Answering the allegations contained in Paragraph Six of the second count of the complaint, this respondent alleges that its prices, whether delivered prices or not, are not and never were made under the alleged formula set forth in Paragraph Five (b) of the second count, and that the prices received by this respondent were the actual prices to respondent's customers for cement produced and sold by this respondent; and that it does not use and never has used the multiple basing point system described in the complaint.

This respondent is without knowledge concerning the allegations in said Paragraph Six which it has not herein specifically admitted or specifically denied and therefore it denies such allegations and each of them.

N. SUPERIOR, INC. answers Paragraph Six of Count II as follows:

Paragraph Six: Answering Paragraph Six of Count II this respondent alleged that since it never did and does not now employ the formula set forth in Paragraph Five (b) it is without knowledge as to the allegations with reference to the basis of delivered prices thereunder and therefore denies the allegations contained in Paragraph Six relating to the practices under said formula.

Further answering Paragraph Six this respondent denies that it has ever discriminated in price between its customers, and denies that it has ever attempted to prevent, lessen, or destroy competition in price.

O. YOSEMITE answers Paragraph Six of Count II as follows:

Answering the allegations contained in Paragraph Six of the second count of the complaint, this respondent alleges that its prices, whether delivered prices or not, are not and never were made under the alleged formula set forth in Paragraph Five (b) of the second count, and that the prices received by this respondent were the actual prices to respondent's customers for cement produced and sold by this respondent; and that it does not use and never has used the multiple basing point system described in the complaint.

This respondent is without knowledge concerning the allegations in said Paragraph Six which it has not herein specifically admitted or specifically denied and therefore it denies such allegations and each of them.

PARAGRAPH SEVEN OF COUNT TWO

COMPLAINT.

Examples of Discrimination.

Paragraph Seven: (a) For the purpose of illustrating the discrimination practiced by producing respondents, there are submitted as part of this Paragraph Seven tabulations showing base prices and freight rates which, if concurrently in existence, would cause the basing points mentioned therein to be the governing basing points for specific destinations. For present purposes, the said basing point prices and the said freight rates are hypothetical but they are not wholly so, for they constitute the respective base prices and rates of all-rail transportation which were simultaneously in effect at a former period. These tabulations are not included herein as allegations of current discrimination in prices made under said pricing system to customers located at destinations named. They are alleged as typical of the discriminations in price now existing under the said pricing system throughout the United States.

(b) Referring to the "delivered prices" included in the tabulations, it is usual in the trade to add ten cents each for the cloth bags, when delivery is so made, and this sum is refunded to the buyer if the bags are returned in good condition; and also to add sums which will later be deducted as discounts if the buyer qualifies to receive them. Since these sums are generally included in the prices quoted only to be deducted subsequently, they are omitted from the tabulated figures.

(c) For the purpose of the illustrations below set forth, these assumptions are made: (1) that the said pricing system is in full effect; (2) that each producer actually ships all-rail rather than to avail itself of less costly truck or water means of delivery; and (3) that the producer at the respective points of production designated in the tabulation, has customers located at the points named in each respective illustration.

(d) The final item entitled in each case "divergence from maximum price" shows the measure of the discrimination.

(e) The illustrations above described are submitted in tabular form in lieu of extended textual averment and are hereby made a part of this complaint, to wit:

QUOTATIONS BY Basing Point:	Albion, Ind. Buffington, Ind.	Brookville, Ind. Ironton, Ohio	Cannelton, Ind. Birmingham, Ala.	Greencastle, Ind. Limedale, Ind.	Shoals, Ind. Mitchell, Ind.	Boonville, Ind. Birmingham, Ala.	Noblesville, Ind. Limedale, Ind.	Franklin, Ind. Limedale, Ind.
Universal-Atlas Cement Co.								
Base Price (per Bbl.)	$1.40	$1.30	$1.00	$1.40	$1.50	$1.00	$1.40	$1.40
Frt. from Basing Point (per Bbl.)	.40	.48	.74	.25	.29	.70	.32	.32
Delivered Price (Less Deductions Noted in Par. 7B)	1.80	1.78	1.74	1.65	1.79	1.70	1.72	1.72
Less Actual Freight to Dest'n	.40	.51	.59	.46	.55	.57	.44	.48
Actual Price	1.40	1.27	1.15	1.19	1.24	1.13	1.28	1.24
Divergence From Maximum Price	.00	.13	.25	.21	.16	.27	.12	.16
Alpha Portland Cement Co.								
Delivered Price (Less Deductions Noted in Par. 7B)	1.80	1.78			1.79		1.72	1.72
Less Actual Freight to Dest'n	.49	.48			.48		.49	.51
Actual Price	1.31	1.30			1.31		1.23	1.21
Divergence From Maximum Price	.19	.00			.09		.27	.29
Lehigh Portland Cement Co.								
Delivered Price (Less Deductions Noted in Par. 7B)	1.80	1.78	1.74	1.65	1.79	1.70	1.72	1.72
Less Actual Freight to Dest'n	.49	.42	.36	.34	.29	.34	.40	.34
Actual Price	1.31	1.36	1.38	1.31	1.50	1.36	1.32	1.38
Divergence From Maximum Price	.19	.14	.12	.19	.00	.1	.18	.12

FOR DELIVERY AT

QUOTATIONS BY Basing Point:	Albion, Ind. Buffington, Ind.	Brookville, Ind. Ironton, Ohio	Cannelton, Ind. Birmingham, Ala.	Greencastle, Ind. Limedale, Ind.	Shoals, Ind. Mitchell, Ind.	Boonville, Ind. Birmingham, Ala.	Noblesville, Ind. Limedale, Ind.	Franklin, Ind. Limedale Ind.
Lone Star Cement Co.								
Delivered Price (Less Deductions Noted in Par. 7B)	$1.80	$1.78	$1.74	$1.65	$1.79	$1.70	$1.72	$1.72
Less Actual Freight to Dest'n	.46	.42	.46	.25	.40	.44	.32	.32
Actual Price	1.34	1.36	1.28	1.40	1.39	1.26	1.40	1.40
Divergence From Maximum Price	.06	.04	.12	.00	.01	.14	.00	.00
Louisville Cement Co.								
Delivered Price (Less Deductions Noted in Par. 7B)	1.80	1.78	1.74	1.65	1.79	1.70	1.72	1.72
Less Actual Freight to Dest'n	.51	.42	.40	.42	.36	.42	.42	.34
Actual Price	1.29	1.36	1.34	1.23	1.43	1.28	1.30	1.38
Divergence From Maximum Price	.53	.46	.48	.59	.39	.54	.52	.44
Wabash Portland Cement Co.								
Delivered Price (Less Deductions Noted in Par. 7B)	1.80	1.78	1.74	1.65	1.79	1.70	1.72	1.72
Less Actual Freight to Dest'n	.30	.38	.57	.44	.51	.57	.40	.42
Actual Price	1.50	1.40	1.17	1.21	1.28	1.13	1.32	1.30
Divergence From Maximum Price	.32	.34	.57	.53	.46	.61	.42	.44
Marquette Cement Mfg. Co.								
Delivered Price (Less Deductions Noted in Par. 7B)	1.80	1.78	1.74	1.65	1.79	1.70	1.72	1.72
Less Actual Freight to Dest'n	.49	.57	.55	.49	.61	.49	.49	.51
Actual Price	1.31	1.21	1.19	1.16	1.18	1.21	1.23	1.21
Divergence From Maximum Price	.19	.29	.57	.34	.58	.55	27	.29

Compilation of Complaint and Answers.

QUOTATIONS BY	Clear Lake Ia.	Indianola Ia.	Dallas Center Ia.	Luther Ia.	Perry Ia.	Ridgeway Ia.	Donnelson Ia.	Monmouth Ia.
Basing Point:	Mason City Ia.	Mason City Ia.	Mason City Ia.	Mason City Ia.	Mason City Ia.	Mason City Ia.	Prospect Hill Alpha, Mo.	Mason City Ia. Buffington, Ind.
Universal-Atlas Cement Co.								
Base Price (per Bbl.)		$1.30	$1.30	$1.30	$1.30	$1.30	$1.30	$1.30
Frt. From Basing Pt. (per Bbl.)		.46					.51	.51
Delivered Price (Less Deductions Noted in Par. 7B)		1.76					1.81	1.81
Less Actual Freight to Dest'n		.61					.53	.51
Actual Price		1.15					1.28	1.30
Divergence From Maximum Price		.15					.02	.00
Penn-Dixie Cement Co.								
Hawkeye Portland Cement Co.								
Delivered Price (Less Deductions Noted in Par. 7B)	$1.57	1.78	1.74	1.74	1.74	1.70	1.81	1.8.
Less Actual Freight to Dest'n	.44	.36	.32	.32	.32	.53	.46	.51
Actual Price	1.13	1.42	1.42	1.42	1.42	1.17	1.35	1.30
Divergence From Maximum Price	.61	.32	.32	.32	.32	.57	.39	.44
Dewey Portland Cement Co.								
Delivered Price (Less Deductions Noted in Par. 7B)	1.57	1.78	1.74	1.74	1.74	1.70	1.81	1.81
Less Actual Freight to Dest'n	.51	.53	.51	.51	.51	.51	.44	.34
Actual Price	1.06	1.25	1.23	1.23	1.23	1.19	1.37	1.47
Divergence From Maximum Price	.68	.49	.51	.51	.51	.55	.37	.27

FOR DELIVERY AT

QUOTATIONS BY	Clear Lake Ia.	Indianola Ia.	Dallas Center Ia.	Luther Ia.	Perry Ia.	Ridgeway Ia.	Donnelson Ia.	Monmouth Ia.
Basing Point:	Mason City Ia.	Mason City Ia.	Mason City Ia.	Mason City Ia.	Mason City Ia.	Mason City Ia.	Prospect Hill Alpha, Mo.	Mason City Ia. Buffington, Ind.
Lone Star Portland Cement Co.								
Delivered Price (Less Deductions Noted in Par. 7B)	$1.57	$1.78	$1.74	$1.74	$1.74	$1.70	$1.81	$1.81
Less Actual Freight to Dest'n		.55	.55	.55	.55	.70	.53	.61
Actual Price		1.23	1.19	1.19	1.19	1.00	1.28	1.20
Divergence From Maximum Price		.22	.26	.24	.26	.45	.17	.25
Lehigh Portland Cement Co.								
Delivered Price (Less Deductions Noted in Par. 7B)	1.57	1.78	1.74	1.74	1.74	1.70	1.81	1.81
Less Actual Freight to Dest'n	.27	.48	.44	.44	.44	.40	.53	.51
Actual Price	1.30	1.30	1.30	1.30	1.30	1.30	1.28	1.30
Divergence From Maximum Price	.00	.00	.00	.00	.00	.00	.02	.00
Northwest'n. States Port. Cem. Co.								
Delivered Price (Less Deductions Noted in Par. 7B)	1.57	1.78	1.74	1.74	1.74	1.70	1.81	1.81
Less Actual Freight to Dest'n	.27	.46	.40	.40	.38	.40	.53	.51
Actual Price	1.30	(1)1.32	(1)1.34	(1)1.34	1.36	1.30	(1)1.28	1.30
Divergence From Maximum Price	.00	.38	.36	.36	.34	.00	.02	.00

(1) In the case of producers having more than one mill from which shipment might be made, it is assumed that shipment would be made from mill which would net producer the highest price.

QUOTATIONS BY	FOR DELIVERY AT							
	Clear Lake Ia.	Indianola Ia.	Dallas Center Ia.	Luther Ia.	Perry Ia.	Ridgeway Ia.	Donnelson Ia.	Monmouth Ia.
Basing Point:	Mason City Ia.	Mason City Ia.	Mason City Ia.	Mason City Ia.	Mason City Ia.	Mason City Ia.	Prospect Hill Alpha, Mo.	Mason City Ia. Buffington, Ind
Marquette Cement Mfg. Co.								
Delivered Price (Less Deductions Noted in Par. 7B)	$1.57	$1.78	$1.74	$1.74	$1.74	$1.70	$1.81	$1.81
Less Actual Freight to Dest'n	.42	.61	.59	.59	.59	.55	.51	.44
Actual Price	1.15	1.17	1.15	1.15	1.15	1.15	1.30	1.37
Divergence From Maximum Price	.25	.23	.25	.25	.25	.25	.10	.03
Ash Grove Portland Cement Co.								
Delivered Price (Less Deductions Noted in Par. 7B)		1.78	1.74	1.74	1.74		1.81	1.81
Less Actual Freight to Dest'n		.53	.48	.48	.46		.59	.61
Actual Price		1.25	1.26	1.26	1.28		1.22	1.20
Divergence From Maximum Price		.06	.05	.05	.03		.09	.07

ANSWERS.

I. Form of Answer Used by The Cement Institute and Certain Producers.

THE CEMENT INSTITUTE and the following companies use a similar form, with variations of substance as noted in the footnotes:

Alpha	Monolith
Arkansas	Monolith Midwest
Ash Grove	National
Bessemer	Nazareth
Castalia	Nebraska
Colorado	North American
Consolidated	Northwestern States
Coplay	Oklahoma
Cumberland	Peerless
Dewey	Petoskey
Edison	Pittsburgh
Federal	Utah
Florida	Signal Mountain
Georgia	Southern States
Giant	Southwestern
Glens Falls	Spokane
Green Bag W. Va.	Standard
Hawkeye	Superior
Hercules	Three Forks
Hermitage	Trinity
Idaho‡	Union
Keystone	Universal Atlas
Kosmos	Volunteer
Lawrence	Vulcanite
Lehigh	Wabash
Lone Star	West Penn
Medusa	Whitehall
Missouri	Wolverine
Monarch	

Paragraph Seven: This respondent is without knowledge of the[1] facts and illustrations of Paragraph Seven, and therefore it denies each and every allegation therein.

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‡ IDAHO amended answer.

[1] VOLUNTEER inserts "alleged."

MONOLITH substitutes "as to the facts alleged and tabulations set forth in" for "of the facts and illustrations of."

II. Non-Uniform Answers.

A. AETNA answers Paragraph Seven of Count II as follows:

Paragraph Seven. This respondent is without knowledge of the tabulations set forth as a part of Paragraph Seven of the Complaint. It denies the allegations set forth in said paragraph that such tabulations in any manner serve to indicate the pricing method applied by this respondent in a majority of its sales, and further denies that the application of the pricing method intended to be typified by such tabulations, constitutes discrimination in price among this respondent's customers.

B. BEAVER answers Paragraph Seven of Count II as follows:

Paragraph Seven: This respondent has denied that it heretofore has been or is now a party to any combination alleged to exist among it and other producers of cement or any others. It alleges it is without information as to the truth or falsity of any of the allegations of Paragraph Seven of the complaint, and therefore denies each and every allegation thereof.

C. CALAVERAS answers Paragraph Seven of Count II as follows:

Paragraph Seven: This respondent is without knowledge as to the allegations or any of them contained in Paragraph Seven of Count II of said complaint.

D. CALIFORNIA answers Paragraph Seven of Count II as follows:

Paragraph Seven: This answering respondent is without knowledge as to the facts alleged and the tabulations and alleged illustrations set forth in Paragraph Seven in Count II of the complaint, and therefore denies each and every allegation thereof.

E. DIAMOND answers Paragraph Seven of Count II as follows:

Paragraph Seven: This respondent has no knowledge of the matters averred in Paragraph Seven and it denies each and every allegation therein.

F. GREEN BAG PA. answers Paragraph Seven of Count II as follows:

Paragraph Seven: This respondent is not named in

Paragraph Seven, it does not sell cement in the territory there referred to and is without knowledge of the facts and illustrations given therein. This respondent denies each and every allegation of Paragraph Seven in so far as constituting a charge against this respondent.

G. HURON answers Paragraph Seven of Count II as follows:

Paragraph Seven: This respondent denies that the tabulation included in Paragraph Seven of said Count II is a fair illustration of the practices of the producing respondents in respect to prices on cement and denies that the tabulations are typical of discriminations in price now existing throughout the United States. It has no present information as to whether or not the "basing point" prices and the freight rates used in said tabulation were ever simultaneously in effect, if in effect at all, and leaves complainant to its proof in that respect, asserting, however, that said tabulation is entirely immaterial and it is not an accurate statement of the prices and rates presently in effect.

H. IDAHO* answers Paragraph Seven of Count II as follows:

VII.

Answering Paragraph Seven of Count II of the complaint, the respondent Idaho Portland Cement Company denies the allegations contained in said paragraph and its sub-sections for the reason that this company does not use the so-called Multiple Basing Point System, nor any other such system; that this company has never added any sums to be later deducted as discounts; and that the assumptions of sub-section (c) cannot be applied to this company for the reasons as heretofore stated.

I. NORTHWESTERN answers Paragraph Seven of Count II as follows:

Paragraph Seven: This respondent is without knowledge of the allegations therein contained, and therefore denies the same.

J. OREGON answers Paragraph Seven of Count II as follows:

Paragraph Seven: This respondent is without knowl-

* Original answer.

edge as to the facts alleged and tabulations set forth in Paragraph Seven of the Complaint and therefore denies each and every allegation thereof.

K. PACIFIC answers Paragraph Seven of Count II as follows:

III.

Answering the allegations contained in paragraph VII of Count II of said complaint, this respondent alleges that it is without knowledge as to said allegations or any of them, and basing its denial upon such ground, denies the same, and each and every part thereof.

L. PENN-DIXIE answers Paragraph Seven of Count II as follows:

14. This respondent denies each and every allegation contained in Paragraph Seven thereof, in so far as such allegations allege or purport to allege any discrimination practiced by this respondent. It is without knowledge as to the truth or accuracy of any of the allegations contained in the said Paragraph Seven, or in the tabulations therein included, alleging or purporting to illustrate discrimination practiced by any producing respondent other than itself.

M. RIVERSIDE answers Paragraph Seven of Count II as follows:

Paragraph Seven: Answering Paragraph Seven of said Count, it alleges that it is without knowledge as to any of the facts or illustrations in said Paragraph Seven alleged and set forth.

N. SANTA CRUZ answers Paragraph Seven of Count II as follows:

VII.

This respondent is without knowledge concerning the allegations, or any of them, in said Paragraph Seven and therefore it denies each of them.

O. SUPERIOR, INC. answers Paragraph Seven of Count II as follows:

Paragraph Seven: Answering Paragraph Seven of Count II, this respondent admits that there is included in its prices the sum of ten cents (10¢) for each sack of cement delivered in cloth bags, and that it refunds said

sum to the buyer if the bags are returned in good condition, and also admits that it allows discounts for cash payments, but denies each and all of the other allegations contained in Paragraph Seven, and particularly denies that any of the tabulations set forth on pages 24, 25, and 26 of Paragraph Seven relate to or involve this respondent in any manner, or to any degree whatsoever.

P. YOSEMITE answers Paragraph Seven of Count II as follows:

This respondent is without knowledge concerning the allegations, or any of them, in said Paragraph Seven and therefore it denies each of them.

PARAGRAPH EIGHT OF COUNT TWO.

COMPLAINT.

Effect of the Discrimination.

Paragraph Eight:- The discrimination in price set forth in Paragraphs Six and Seven of this Count II is the result of respondents' combination and conspiracy alleged in Paragraphs Four and Five hereof. The effect of said discriminations in price is to injure, destroy and prevent competition in price on the part of each producing respondent with all others who likewise grant discriminations under respondents' said pricing system. Insofar as said system is followed, every producer knows what every other producer following the system will quote and charge as his delivered price to any given destination and that all delivered prices will be identical. Each said producer knows that, in reciprocity for its omission to offer competitive prices to prospective customers located in the consuming areas adjacent to its mill (where it has a natural advantage and receives its highest actual price), each respective producer will receive the same immunity from price competition when it sells in the consuming areas adjacent to other mills. A difference in delivered price of only one cent (1¢) a barrel will deflect the business away from one manufacturer to another. Thus each reciprocally waives the advantages and neutralizes the disadvantages which it has in certain consuming areas as aforesaid in order that there may not anywhere be genuine competition in price between producers which, except for such reciprocal waiver and neutralization, would be in normal and active competition in price.

ANSWERS.

I. Form of Answer Used by The Cement Institute and Certain Producers.

THE CEMENT INSTITUTE and the following companies use a similar form, with variations of substance as noted in the footnotes:

Aetna
Alpha
Arkansas
Ash Grove
Bessemer
Castalia
Colorado
Consolidated
Coplay
Cumberland
Dewey
Edison
Federal
Florida
Georgia
Giant
Glens Falls
Green Bag Pa.
Green Bag W. Va.
Hawkeye
Hercules
Hermitage
Idaho‡
Keystone
Kosmos
Lawrence
Lehigh
Lone Star
Medusa
Missouri
Monarch
Monolith Midwest
National
Nazareth
Nebraska
North American
Northwestern States
Oklahoma
Peerless
Petoskey
Pittsburgh
Utah
Signal Mountain
Southern States
Southwestern
Spokane
Standard
Superior
Three Forks
Trinity
Union
Volunteer
Vulcanite
Wabash
West Penn
Whitehall
Wolverine

Paragraph Eight: This respondent denies each and every allegation[1] of Paragraph Eight.

[1] AETNA substitutes "the allegations contained in" for "each and every allegation of."

‡ IDAHO amended answer.

II. Non-Uniform Answers.

A. BEAVER answers Paragraph Eight of Count II as follows:

Paragraph Eight: This respondent has denied that it heretofore has been or is now a party to any combination alleged to exist among it and other producers of cement or any others. It alleges it is without information as to the truth or falsity of any of the allegations of Paragraph Eight of the complaint, and therefore denies each and every allegation thereof.

B. CALAVERAS answers Paragraph Eight of Count II as follows:

Paragraph Eight: For answer to the allegations contained in Paragraph Eight of Count II of said complaint, this respondent denies that it is or ever has been a party to or a member of the combination and conspiracy, or combination or conspiracy, alleged in Paragraphs Four and Five of said Count II of the complaint, or either thereof; denies that it, alone or with any other respondent or respondents, ever discriminated in price, the effect of which is or at any time was to injure, destroy and prevent, or injure or destroy or prevent, competition in price on the part of this respondent, with all or any other respondent; denies that this respondent knows that, in reciprocity for its omission to offer competitive prices to prospective customers located in the consuming areas adjacent to its mill, or otherwise or at all, each respective producer, or any producer, will receive the same or any immunity from price competition when it sells in the consuming areas adjacent to other mills, or in any consuming area; denies that this respondent now uses or at any time has used the basing point price system described in the complaint. In this connection this respondent alleges that it is, and at all times since it commenced the manufacture of cement has been, in active competition with each and every producer of cement which markets cement in any of the territory in which this respondent markets cement.

For further answer to the allegations contained in said Paragraph Eight of Count II of said complaint, this respondent states that it is without knowledge as to any of said allegations which it has not herein specifically denied.

C. CALIFORNIA answers Paragraph Eight of Count II as follows:

Paragraph Eight: This answering respondent denies that it has participated in any way in any of the matters alleged in Paragraph Eight of Count II of the complaint, and denies each and every of the allegations thereof in so far as the same are alleged, or refer to it, or to any acts or practices by it. Respondent alleges that it is in active, free and unrestrained competition with all other manufacturers of cement who seek to, or are able under economic laws to, market their product within the geographical areas (hereinabove described) in which this respondent markets or distributes its product. Respondent has no knowledge of the matters alleged in said paragraph in so far as the same affect or refer to any of the other respondents, and upon that ground denies each and every allegation of said Paragraph Eight in so far as the same affect or refer to the other respondents.

D. DIAMOND answers Paragraph Eight of Count II as follows:

Paragraph Eight: Respondent denies that there are any unlawful discriminations in price by it as set forth in Paragraph 6 and 7 of this Count II and it denies that any such discrimination as is alleged is in any way a result of this respondent's alleged combination and conspiracy with any other respondent and avers the fact to be that there is no unlawful combination and no conspiracy between this respondent and any one or more of the other respondents.

It denies that each respondent producer knows that in reciprocity for its omission to offer competitive prices to prospective customers located in the consuming areas adjacent to its mill, each respective producer will receive the same immunity from price competition when it sells in the consuming areas adjacent to other mills.

It admits that a difference in delivered price of only one cent a barrel will sometimes deflect the business from one manufacturer to another, but says that larger differences in price do not always so deflect business. And it denies that this respondent reciprocally waives any advantages or neutralizes any disadvantages which it has in its consuming or sales area in order that there may not anywhere be genuine competition in price between produc-

ers which, except for such reciprocal waiving and neutralizing would be in normal and active competition in price.

This respondent denies each and every allegation of Paragraph Eight not hereinbefore specifically admitted or denied.

E. HURON answers Paragraph Eight of Count II as follows:

Paragraph Eight: As to the matters set forth in Paragraph Eight of Count II of said Complaint, this respondent denies each and every averment therein except that it admits that a difference of one cent per barrel may "deflect the business away from one manufacturer to another" but it denies that it necessarily will have this effect.

F. IDAHO* answers Paragraph Eight of Count II as follows:

VIII.

Answering Paragraph Eight of Count II of the complaint, respondent Idaho Portland Cement Company denies that it has entered into any combination or conspiracy with any other producing cement company and reiterates that competition is normal and active in the territory which is served by this company.

G. MONOLITH answers Paragraph Eight of Count II as follows:

Paragraph Eight: This respondent is without knowledge as to the facts alleged in Paragraph Eight of the Complaint and therefore denies each and every allegation thereof.

H. NORTHWESTERN answers Paragraph Eight of Count II as follows:

Paragraph Eight: This respondent is without knowledge as to the facts alleged in Paragraph Eight, and therefore denies the same.

I. OREGON answers Paragraph Eight of Count II as follows:

Paragraph Eight: This respondent is without knowledge as to the facts alleged in Paragraph Eight of the Complaint and therefore denies each and every allegation thereof.

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* Original answer.

J. PACIFIC answers Paragraph Eight of Count II as follows:

IV.

Answering the allegations contained in paragraph VIII of Count II of said complaint, this respondent denies each and every, all and singular, the allegations contained therein, and particularly denies that it is or has been a member of any combination or conspiracy either as alleged in paragraphs IV and V of Count II of said complaint or otherwise or at all, and denies that any alleged discrimination referred to in paragraphs VI and VII of Count II, or any discrimination, results or has resulted from any act or practice of this respondent, either by way of conspiracy, combination, or otherwise or at all. This respondent further denies that reciprocally or otherwise it waives or ever waived the advantages or neutralizes or ever neutralized the disadvantages which it has in certain or any consuming areas in order that there may not be genuine competition in price between producers which, except for such alleged reciprocal waiver or neutralization, would be a normal or active competition in price.

K. PENN-DIXIE answers Paragraph Eight of Count II as follows:

15. This respondent denies each and every allegation contained in Paragraph Eight thereof, except that a difference in delivered price of cement of only one cent (1c) a barrel will deflect the business away from one manufacturer to another.

L. RIVERSIDE answers Paragraph Eight of Count II as follows:

Paragraph Eight: Answering Paragraph Eight, this respondent alleges that it is without knowledge as to the otherwise or at all, and denies that any alleged descrimwaives or over waived the advantages or neutralizes or facts, or any of them, therein set forth except the following: It denies that the asserted discrimination in price referred to in Paragraphs Six and Seven of Count II, or any discrimination, is the result of any act or practice of this respondent, or to its knowledge, of any respondent, whether by way of conspiracy, combination, or otherwise or at all. It likewise denies that this respondent re-

ciprocally or otherwise waives the advantages or neutralizes the disadvantages which it has in certain consuming areas, or any consuming areas, in order that there may not anywhere be genuine competition in price between producers which, except for such alleged reciprocal waiver or neutralization, would be in normal or active competition in price. It alleges in this connection that this respondent is in normal and active competition with any and all other manufacturers of cement who seek to market their product within areas where it is economically feasible for this respondent to make distribution and delivery of its product.

M. SANTA CRUZ answers Paragraph Eight of Count II as follows:

VIII.

Answering the allegations contained in Paragraph Eight of the second count of the complaint, this respondent alleges that it has never been a member of or party to the combination and conspiracy alleged in Paragraphs Four and Five of the second count of the complaint; that it has never used or employed the basing point price system described in the complaint; that it has never participated in any price discrimination, the effect of which is to injure, destroy or prevent competition in price on the part of each producing respondent with all others, or of any producing respondent with any other; that it has never waived the advantages or neutralized the disadvantages which it has in any consuming area in order that there may not anywhere be genuine competition in price between producers; that in consuming areas in which this respondent markets its product there is normal and active competition in price between this respondent and other producing respondents which market their products therein; and that this respondent is in normal and active competition with any and all other producers of cement who seek to market their product in areas where it is economically advantageous for this respondent to market its product.

This respondent is without knowledge concerning the allegations in said Paragraph Eight which it has not herein specifically admitted or specifically denied and therefore it denies such allegations and each of them.

N. SUPERIOR, INC. answers Paragraph Eight of Count II as follows:

Paragraph Eight: Answering Paragraph Eight of Count II, this respondent denies each and all of the allegations therein contained.

O. UNIVERSAL ATLAS answers Paragraph Eight of Count II as follows:

Paragraph Eight: This respondent admits that a difference in delivered price of only one cent a barrel will deflect the business away from one manufacturer to another.

Except as hereinabove set forth this respondent denies each and every allegation of Paragraph Eight.

P. YOSEMITE answers Paragraph Eight of Count II as follows:

Answering the allegations contained in Paragraph Eight of the second count of the complaint, this respondent alleges that it has never been a member of or party to the combination and conspiracy alleged in Paragraphs Four and Five of the second count of the complaint; that it has never used or employed the basing point price system described in the complaint; that it has never participated in any price discrimination, the effect of which is to injure, destroy or prevent competition in price on the part of each producing respondent with all others, or of any producing respondent with any other; that it has never waived the advantages or neutralized the disadvantages which it has in any consuming area in order that there may not anywhere be genuine competition in price between producers; that in consuming areas in which this respondent markets its product there is normal and active competition in price between this respondent and other producing respondents which market their products therein; and that this respondent is in normal and active competition with any and all other producers of cement who seek to market their product in areas where it is economically advantageous for this respondent to market its product.

This respondent is without knowledge concerning the allegations in said Paragraph Eight which it has not herein specifically admitted or specifically denied and therefore it denies such allegations and each of them.

PARAGRAPH NINE OF COUNT TWO. COMPLAINT.

Violation of Clayton Act as Amended.

Paragraph Nine: The acts of discrimination in interstate commerce performed in the actual course of such commerce in this Count set forth may have the effect substantially to lessen, and they actually do substantially lessen, competition in cement of like grade and quality; and constitute unlawful discrimination in price within the intent and meaning of Section 2 of the aforesaid Clayton Act as amended by the aforesaid Robinson-Patman Act.

ANSWERS.

I. Form of Answer Used by The Cement Institute and Certain Producers.

THE CEMENT INSTITUTE and the following companies use a similar form, with variations of substance as noted in the footnotes:

Aetna	Hawkeye
Alpha	Hercules
Arkansas	Hermitage
Ash Grove	Idaho‡
Bessemer	Keystone
Castalia	Kosmos
Colorado	Lawrence
Consolidated	Lehigh
Coplay	Lone Star
Cumberland	Medusa
Dewey	Missouri
Diamond	Monarch
Edison	Monolith
Federal	Monolith Midwest
Florida	National
Georgia	Nazareth
Giant	Nebraska
Glens Falls	North American
Green Bag Pa.	Northwestern
Green Bag W. Va.	Northwestern States

‡ IDAHO amended answer.

Oklahoma	Standard
Oregon	Superior
Peerless	Three Forks
Penn-Dixie	Trinity
Petoskey	Union
Pittsburgh	Universal Atlas
Utah	Vulcanite
Signal Mountain	Wabash
Southern States	West Penn
Southwestern	Whitehall
Spokane	Wolverine

Paragraph Nine: This respondent denies each and every allegation of[1] Paragraph Nine.[2]

Except as hereinabove set forth, this respondent denies each and every allegation of Count II.[3]

II. Non-Uniform Answers.

A. BEAVER answers Paragraph Nine of Count II as follows:

Paragraph Nine: This respondent has denied that it heretofore has been or is now a party to any combination alleged to exist among it and other producers of cement or any others. It alleges it is without information as to the truth or falsity of any of the allegations of Paragraph Nine of the complaint, and therefore denies each and every allegation thereof.

B. CALAVERAS answers Paragraph Nine of Count II as follows:

Paragraph Nine: For answer to the allegations con-

[1] AETNA substitutes "the allegations contained in" for "each and every allegation of."

[2] THE CEMENT INSTITUTE answer inserts after this paragraph the following paragraph:

"These respondents aver that they are not engaged in commerce, and that they do not buy or sell any products and they have not engaged in any discrimination in price in violation of Section 2 of the Clayton Act as amended by the Robinson-Patman Act."

ALPHA inserts the following:

"It avers that any differences in price which may have been made by it have been made in good faith to meet competition or made pursuant to Section 2 of the Clayton Act as amended by the Robinson-Patman Act."

[3] AETNA, NORTHWESTERN and OREGON omit this entire preceding paragraph.

tained in Paragraph Nine of Count II of said complaint, this respondent denies that it has committed, performed or done, alone or with any other respondent or respondents, any act or acts of discrimination in interstate commerce in the actual course of such commerce, which has or may have the effect substantially to lessen, or which has substantially lessened, or may substantially lessen, competition in cement of like grade and quality, or like grade or quality; denies that any act or acts done, committed or performed by this respondent in interstate commerce, whether or not in the actual course of such commerce, constitute unlawful discrimination in price within the intent and meaning, or within the intent or meaning, of Section 2 of said Clayton Act, as amended by said Robinson-Patman Act.

For further answer to the allegations contained in said Paragraph Nine of Count II of said complaint, this respondent states that it is without knowledge as to any of said allegations which it has not herein specifically denied.

C. CALIFORNIA answers Paragraph Nine of Count II as follows:

Paragraph Nine: Denies that this answering respondent has done or carried on, or is doing or carrying on, any acts of discrimination in interstate commerce, or has performed, or is performing, in the actual course of such commerce, or otherwise, any acts which have had or have or may have the effect, substantially or otherwise, to lessen, or that any of same actually do, substantially or otherwise, lessen, competition in the price or sale of cement of like grade or quality, or that any of same constitute unlawful, or any, discrimination in price, or otherwise, within the intent or meaning of Section 2 of the Clayton Act as amended by the Robinson-Patman Act, or otherwise, or at all.

D. HURON answers Paragraph Nine of Count II as follows:

Paragraph Nine. As to matters alleged in Paragraph Nine of said Count II of said complaint, this respondent denies the same.

Except as hereinbefore set forth, this respondent denies each and every allegation of Count II.

E. IDAHO* answers Paragraph Nine of Count II as follows:

IX.

Answering Paragraph Nine of Count II of the complaint, respondent Idaho Portland Cement Company denies that it has entered into agreements with any other producing cement companies which would constitute unlawful discrimination in prices within the intent and meaning of section two of the Clayton Act as amended by the Robinson-Patman Act.

F. PACIFIC answers Paragraph Nine of Count II as follows:

V.

Answering the allegations contained in paragraph IX of Count II of said complaint, this respondent alleges that it has not committed, performed, or done and is not committing, performing, or doing, either alone or with any other respondent or respondents, any act or acts of discrimination in interstate commerce in the actual course of such commerce or otherwise which has or may have the effect substantially to lessen, or which has lessened or may substantially lessen, competition in cement of like grade and quality or like grade or quality, and that any act or acts committed or performed by this respondent in interstate commerce, whether or not in the actual course of such commerce, does not constitute unlawful discrimination in commerce within the effect or meaning of said section 2 of said Clayton Act, as amended by said Robinson-Patman Act.

G. RIVERSIDE answers Paragraph Nine of Count II as follows:

Paragraph Nine: Answering Paragraph Nine of said Count, it denies that it has committed, performed, or carried on any acts of discrimination in interstate commerce, whether performed in the actual course of such commerce or otherwise. It likewise denies that the or any act or acts of alleged discrimination in interstate commerce, whether performed in the actual course of such commerce or as in said Count set forth or otherwise, may have the effect to substantially, or at all to lessen,

* Original answer.

or that they actually do substantially or at all lessen, competition in cement of like grade or quality, or that they, or any of them, constitute unlawful or any discrimination in price or otherwise, within the intent and meaning of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, or otherwise, or at all.

H. SANTA CRUZ answers Paragraph Nine of Count II as follows:

IX.

Answering the allegations contained in Paragraph Nine of the second count of the complaint, this respondent alleges that it has not committed, performed or done, either alone or with any other respondent or respondents, any act or acts of discrimination in interstate commerce in the actual course of such commerce, which has or may have the effect substantially to lessen, or which has lessened or may substantially lessen competition in cement of like grade or quality; and that any act or acts committed or performed by this respondent in interstate commerce, whether or not in the actual course of such commerce, does not and do not constitute unlawful discrimination in price within the intent or meaning of Section 2 of said Clayton Act, as amended by said Robinson-Patman Act, or otherwise, or at all.

This respondent is without knowledge concerning the allegations in said Paragraph Nine which it has not herein specifically admitted or specifically denied and therefore it denies such allegations and each of them.

I. SUPERIOR, INC. answers Paragraph Nine of Count II as follows:

Paragraph Nine: Answering Paragraph Nine of Count II, this respondent denies each and all of the allegations therein contained.

J. VOLUNTEER answers Paragraph Nine of Count II as follows:

Paragraph Nine: This respondent denies that the acts alleged in the complaint constitute an illegal discrimination in price within the intent and meaning of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act. It denies each and every allegation of Paragraph Nine.

K. YOSEMITE answers Paragraph Nine of Count II as follows:

IX.

Answering the allegations contained in Paragraph Nine of the second count of the complaint, this respondent alleges that it has not committed, performed or done, either alone or with any other respondent or respondents, any act or acts of discrimination in interstate commerce in the actual course of such commerce, which has or may have the effect substantially to lessen, or which has lessened or may substantially lessen competition in cement of like grade or quality; and that any act or acts committed or performed by this respondent in interstate commerce, whether or not in the actual course of such commerce, do not and do not constitute unlawful discrimination in price within the intent or meaning of Section 2 of said Clayton Act, as amended by said Robinson-Patman Act, or otherwise, or at all.

This respondent is without knowledge concerning the allegations in said Paragraph Nine which it has not herein specifically admitted or specifically denied and therefore it denies such allegations and each of them.

AFFIRMATIVE DEFENSE TO COUNT TWO UNDER THE ROBINSON-PATMAN ACT.

I. Affirmative Defense of the Cement Institute.

THE CEMENT INSTITUTE includes an Affirmative Defense to Count II as follows:

These respondents aver that they are not engaged in commerce, and that they do not buy or sell any products and they have not engaged in any discrimination in price in violation of Section 2 of the Clayton Act as amended by the Robinson-Patman Act.

Except as hereinabove set forth, these respondents deny each and every allegation of Count II.

Except as hereinabove set forth, these respondents deny each and every allegation of the complaint.

II. Similar Form of Affirmative Defense by Certain Producers.

The following companies use a similar form of Affirmative Defense to Count II with variations of substance as noted in the footnotes:

Aetna	Monarch
Alpha	Monolith
Arkansas	Monolith Midwest
Ash Grove	National
Beaver	Nazareth
Bessemer	Nebraska
Calaveras	North American
California	Northwestern
Castalia	Northwestern States
Colorado	Oklahoma
Consolidated	Oregon
Coplay	Pacific
Cumberland	Peerless
Dewey	Penn-Dixie
Diamond	Petoskey
Edison	Pittsburgh
Federal	Utah
Florida	Signal Mountain
Georgia	Southern States
Giant	Southwestern
Glens Falls	Spokane
Green Bag Pr.	Standard
Green Bag W. Va.	Superior
Hawkeye	Three Forks
Hercules	Trinity
Hermitage	Union
Idaho‡	Universal
Keystone	Volunteer
Kosmos	Vulcanite
Lawrence	Wabash
Lehigh	West Penn
Lone Star	Whitehall
Medusa	Wolverine
Missouri	Yosemite

‡ IDAHO amended answer.

As a separate and affirmative defense to Count II, this respondent avers that any differences in price which may have been made by it[1] have been made in good faith to meet competition or otherwise[2] pursuant to[3] Section 2 of the Clayton Act as amended by the Robinson-Patman Act.[4]

Except as hereinabove set forth[5] this respondent denies each and every allegation of the complaint.[6]

III. Companies Not Using an Affirmative Defense.

The following companies do no have a separate Affirmative Defense with respect to the allegations under the Robinson-Patman Act:

Great Lakes	Riverside
Huron	Santa Cruz
Idaho	Valley Forge

IV. Non-Uniform Affirmative Defense.

SUPERIOR, INC. includes an Affirmative Defense to Count II as follows:

Your respondent further alleges that any difference in prices which it may have made have been made in good faith for the purpose of meeting competition, or for other purposes in compliance with the provisions of Section 2 of the Clayton Act as amended by the Robinson-Patman Act, and that none of the acts of this respondent constitute unlawful lessening of competition or unlawful discrimination in price within the intent and meaning of Section 2 of the aforesaid Clayton Act or the Robinson-Patman Act.

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[1] VOLUNTEER substitues "between any two or more of its customers" for "by it."

[2] ALPHA, NORTH AMERICAN and VOLUNTEER substitute "made" for "otherwise."

[3] PENN-DIXIE substitutes "for other reasons compatible with" for "otherwise pursuant to."

BEAVER inserts "the provisions of."

[4] ALPHA and VOLUNTEER insert the following paragraph:

"Except as hereinabove set forth, the respondent denies each and every allegation of Count II."

[5] AETNA omits "Except as hereinabove set forth," and adds "not hereinabove expressly admitted" at end of paragraph.

[6] ALPHA, CALAVERAS, CALIFORNIA, NORTHWESTERN, PACIFIC and YOSEMITE omit this entire paragraph.

FURTHER DEFENSE.

I. The Cement Institute.

THE CEMENT INSTITUTE uses the following Further Defense:

History and Function of the Cement Institute.

As a further defense to the complaint, these respondents respectfully set forth the following statements as to the history and functions of The Cement Institute.

Purposes of the Institute.

THE CEMENT INSTITUTE was organized in August, 1929, and its purposes were set forth in Articles of Association which were adopted a few months later. Article II thereof sets forth these purposes as follows:

"To promote the best interests of the cement industry by providing facilities for collecting information with respect to trade and commerce therein, and disseminating such information. The information so collected and disseminated, shall be as follows:

(a) Information concerning credits.

(b) Information concerning actually closed specific job contracts and other contracts for the future delivery of Portland Cement.

(c) Information concerning production and stocks on hand of clinker and Portland Cement and shipments of Portland Cement, and cloth sack returns."

The Articles of Association of The Cement Institute bear a striking similarity to the constitution of The Cement Manufacturers Protective Association which was before the United States Supreme Court in 1925 in *Cement Manufacturers Protective Association* v. *United States*, 268 U.S. 588.

The purposes of the old Protective Association as described by its constitution were stated in that decision (pp. 590-1) as the

"collection and dissemination of such accurate information as may serve to protect each manufacturer against misrepresentation, deception and imposition, and enable him to conduct his business exactly as he pleases in every respect, and particularly free from misdirection by false or insufficient information concerning the following matters, to wit:

(a) Information concerning credits;

(b) Information concerning contracts which have been made for the delivery of cement sufficiently complete to enable the manufacturer to protect himself against spurious contracts and like transactions induced by misrepresentations;

(c) Information concerning freight rates on cement;

(d) Statistical information as to production, stocks of cement and clinker on hand and shipments."

The Protective Association was dissolved by the voluntary action of its members in 1924.

Structure of the Institute.

THE CEMENT INSTITUTE is an unincorporated association which now includes among its members most of the producers of Portland Cement located in various sections of the United States. From time to time the Institute has had a portion of its membership divided into a Northeastern, Southeastern, Chicago and Kansas City division, some of which divisions have had local offices. It has also maintained freight rate bureaus located at Bethlehem, Pennsylvania, and Chicago, Illinois.

The Articles of Association provide for a representative Board of Trustees, which has always confined itself to the purpose of the Institute as set forth in the Articles and to the pursuit of lawful plans to effectuate such purposes. At no time has any committee, officer, or employee of the Institute had any power to bind the Institute or its members concerning any matter affecting the policy or purposes of the Institute. The services of the Institute have been determined and defined by the members on the basis of recommendations submitted by the trustees. After such services have been so determined they are performed by officers and employees.

Collection and Distribution of Information.

The Institute was primarily organized to collect and disseminate certain types of information; essentially its service has been statistical. The furnishing of the types of information mentioned in the Articles of Association represents distinct, separate and unrelated services and is not a part of a unified plan. Statistical data compiled by the Institute have been made available to others than Institute members including representatives of the public.

The extent and limits of these Institute services have been:

(a) Information Concerning Credits.

The Kansas City division of the Institute, during the operation of that office, and the Chicago Division, for a very short time, supplied information concerning credits which was limited to a monthly alphabetical list of accounts which were overdue, consisting of the name and address of the delinquent debtor and the member company having the account. This service was not generally adopted since independent and private credit organizations were already supplying this type of information.

(b) Information Concerning Contracts.

When The Cement Institute was organized, one of its services consisted of the collection and distribution of information about specific job contracts.

In its *Report on Cement Industry*, transmitted to the Senate on June 9, 1933 (Senate Document No. 71, 73d Congress, 1st Session, p. 101), the Federal Trade Commission made this comment on the activity of The Cement Institute concerning specific job contracts:

"It appears from the foregoing that the methods and procedure used in the conduct of specific job contract checking by the Cement Institute were practically the same as those used by the Cement Manufacturers' Protective Association, of which the United States Supreme Court said: 'We do not see, however, in the activity of the defendants with respect to specific job contracts any basis for the contention that they constitute an unlawful restraint of commerce (268 U. S. 588, 603)' ".

Because the members felt that its essential purpose in checking fraud had been accomplished, this activity was suspended by the end of September, 1936.

(c) Cement Institute Freight Rate Books.

The custom in the cement industry of selling cement at a destination price was an established trade practice before the organization of The Cement Institute and is referred to by the Supreme Court in its 1925 decision. At

the time of the organization of the Institute, a freight rate service was furnished by an independent organization called the National Traffic Bureau, located at Washington, D. C. This enterprise continued until March 14, 1930, at which time it was discontinued. After that date The Cement Institute established freight rate bureaus for the purpose of publishing books and interim amendments which showed all rail freight rates on cement compiled from official railroad tariffs. These books contained information consisting of actual freight rates between points of actual shipment and actual points of destination, the rates being official carload rates on cement expressed in cents per 100 pounds.

These freight rate books generally include all of the destinations within the area covered by the respective books and include the actual freight rates to such destinations from all points of actual shipment located within the area covered by the respective books, as well as from all other points from which any appreciable amount of cement is shipped to such destinations. Such books have been compiled and prepared for all of the states with the exception of Washington, Oregon, California, Arizona, Nevada, Utah, Colorado, Wyoming, Montana and Idaho.

The books published by the Freight Rate Bureau have been made available to all persons who contribute to the cost of preparation and distribution. In addition, these freight rate books have been distributed without charge to State highway departments and other governmental bodies interested in the purchase of cement.

The nature of these freight rate books, as well as the manner and motive of their preparation and distribution, are all substantially identical with the freight rate information service formerly rendered to its members by the Cement Manufacturers Protective Association, as described by the United States Supreme Court in *Cement Manufacturers Protective Ass'n* v. *United States*, 268 U. S. 588, 597. The description there given by the Court of the association freight rate books—except for the applicable territory, the unit, and the number of rates given—is a substantially accurate description of the freight rate books distributed by The Cement Institute. In its opinion the Supreme Court had this to say about freight rate books:

"The custom in the cement trade of selling cement at a delivered price which includes the mill price, the price of bags and freight charges, was an established trade practice

before the organization of the defendant association . . . . The freight rates contained in the freight rate book are compiled from the official tariffs and translated from the rate per ton of the official tariffs into the rate per barrel of 380 pounds, the unit for the sale of cement. Similar lists of freight rates embracing substantially the same subject matter were prepared and used by individual manufacturers before the organization of the defendant association. The association freight rate book took the place of previous separate publications by individual manufacturers, with a consequent saving of money and increase of accuracy and a more thorough and continuous checking of rates. The basing points from which freight rates were calculated were not selected by the Association, but were the same as those appearing in prior books published by individuals before the publication of the Association freight rate book. The basing points are points of actual shipment from which the larger proportion of the cement in a given locality in which cement is manufactured is actually shipped. The rates published are the actual rates, omitting fractions of cents, between the basing points and actual points of delivery . . . . The freight rate book, therefore, not only enables the manufacturer to calculate a delivered price on the basis of his own mill price, which he determines, to points in the territory nearest in point of freight rate to his own mill, but it enables him also to determine at once the freight differential which he must offset in his mill price in order to compete with other manufacturers serving any other given territory."

The same considerations which caused the Supreme Court to approve the Protective Association's compilation and publication of the freight rate books now justify their compilation and publication by the Institute.

(d) Statistics on Production, Shipments, and Stocks on hand.

The Institute has also compiled and distributed statistics concerning production, shipments, and stocks on hand. This information is similar to a service which had been rendered to its members by the Cement Manufacturers Protective Association and described by the Supreme Court in 1925 as follows (p. 600):

"Each member of the Association, in addition to the

reports on specific job contracts already referred to, sends to the Association a monthly statement of its production of clinker and ground cement, shipments and stock on hand for the past month and for the corresponding periods of the previous year. These were compiled and distributed to members without any change or comment. In addition, semi-monthly statements of shipments were also received and likewise distributed. Each member of the Association was thus given full information as to the available supply of cement and by whom it was held."

The Cement Institute under the National Industrial Recovery Act.

With the enactment of the National Industrial Recovery Act, The Cement Institute became active in bringing together the producers of cement for the purpose of negotiating a code since the Act provided that such codes might properly be presented by a trade association. The N.R.A. Code for the Cement Manufacturing Industry was approved November 27, 1933, by the President of the United States. The Institute continued its freight rate and statistical service but offered and devoted most of its facilities to the Cement Code Authority.

The Cement Institute after the National Industrial Recovery Act.

Following the invalidation of the N.R.A. Codes by the United States Supreme Court, the activities of The Cement Institute were limited to the following: (1) statistics on production, shipments and stocks on hand; (2) compilation and distribution of freight rate books; (3) specific job contract information (later abandoned); and (4) certain specified general office activities under supervision of counsel, including the distribution of information to members on pending or recently enacted legislation and governmental regulations.

Conclusion.

In accordance with the purposes of The Cement Institute, the work of the Institute has in the main been purely mechanical and largely statistical. It has never influenced the marketing policies of its members nor has it at any time or to any degree endeavored to control or

influence, or in fact control their method of conducting business. It has not promoted nor has it aided or participated with its members or any of them or any others in any agreement or understanding concerning prices or marketing methods.

These respondents submit that the application of the doctrine of *stare decisis* to the decision in the case of *Cement Manufacturers Protective Association v. United States*, 268 U. S. 588, establishes that all of the activities of the Institute have been specifically approved by the Supreme Court of the United States and that they are legal and do not contravene the Federal Anti-Trust Laws.

II. Further Defense of Certain Producers.

The following companies use a similar form in the Introduction and in Section 1 of the Further Defense, with variations of substance as noted in the footnotes:

Alpha
Arkansas
Ash Grove
Bessemer
Colorado
Consolidated
Coplay
Cumberland
Dewey
Diamond
Federal
Florida
Georgia
Giant
Glens Falls
Green Bag W. Va.
Hawkeye
Hercules
Hermitage
Keystone
Kosmos
Lawrence
Lehigh
Lone Star
Medusa
Missouri
Monarch
Monolith Midwest
National
Nazareth
Nebraska
Northwestern States
Oklahoma
Peerless
Penn-Dixie
Petoskey
Pittsburgh-Columbia
Utah
Signal Mountain
Southern States
Southwestern
Standard
Superior
Three Forks
Trinity
Union
Universal Atlas
Volunteer
Vulcanite
Wabash
West Penn
Whitehall
Wolverine.

Introduction.

As a further defense to the complaint,[1] this respondent respectfully sets forth the following statements as to certain of the matters alleged in the complaint but the statements herein as to any practice prevailing at any time in the cement industry are to be construed not as an admission but rather as a denial[2] that any practice or marketing method[3] was adopted or is maintained by agreement, understanding, concert of action or any form of cooperation among any of the respondents or any others:[4]

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[1] ALPHA inserts "and without in any respect limiting or modifying the denials heretofore contained in this answer,".

[2] PENN-DIXIE substitutes "and this respondent expressly denies" for "but rather as a denial."

[3] ALPHA, PENN-DIXIE and VOLUNTEER omit "or marketing method."

[4] CONSOLIDATED, FLORIDA, SIGNAL MOUNTAIN and TRINITY substitute "between this respondent and any others:" for "among any of the respondents or any others:"

STANDARD substitutes "between this respondent and any one or more of the other respondents, or any other parties whomsoever," for "among any of the respondents or any others:"

STANDARD inserts "This respondent avers that the methods followed by it in the conduct of its business and in the marketing of its product are not and never have been pursuant to or as a result of any agreement, understanding, concert of action or any form of co-operation between this respondent and any of the other respondents, or any other parties whomsoever."

STANDARD inserts a section entitled "I. Use of Term Multiple Basing Point." as follows:

> "As hereinbefore stated, cement is generally sold at destination prices within the marketing area of this respondent. This destination price method of marketing cement has been frequently referred to in the cement industry as the multiple basing point method of pricing; but this respondent avers that, for the reasons hereinafter stated, such use of the term is in fact and in law erroneous and inaccurate, and that the destination price method of marketing as used in the cement industry is in no way identical with or similar to (and is to be distinguished from) single and multiple basing point methods of pricing used and prevailing in other industries."

VOLUNTEER substitutes "between it and any of the other respondents." for "among any of the respondents or any others:" and adds "Furthermore, respondent avers that no practice prevailing at any time in the cement industry was adopted or maintained by agreement, understanding, concert of action or any form of cooperation between it and any of the other respondents:".

1. Development of the So-Called Multiple Basing Point[1] Method of Marketing Cement.

The term "Multiple Basing Point Method" has been current in the industry for many years but it has been loosely and improperly used, and this respondent denies that the marketing method in the cement industry is identical with or substantially similar to the marketing methods used in other industries.[2] In considering the method of marketing cement which is in general use today, there are two facts that must always be kept in mind.[3] The first is that Portland cement is made under standard minimum[4] specifications[5] with the result that the product of different producers is substantially identical.[6] The second is that cement is a heavy commodity with the result that it cannot be economically transported long distances. In fact, the average haul is less than 200 miles.[7] Thus transportation costs play an important if not controlling part in determining the limits of the marketing area of any plant.[8]

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[1] CONSOLIDATED, FLORIDA, MISSOURI, SIGNAL MOUNTAIN, STANDARD and TRINITY substitute "Destination Price" for "So-Called Multiple Basing Point."

[2] ALPHA, CONSOLIDATED, FLORIDA, SIGNAL MOUNTAIN and TRINITY omit the entire preceding sentence.

[3] STANDARD omits the two preceding sentences and substitutes "There are two factors which have influenced the development of the methods of marketing cement, and which have resulted in the marketing method in general use at the present time."

[4] CONSOLIDATED, FLORIDA, SIGNAL MOUNTAIN and TRINITY omit "minimum."

[5] CONSOLIDATED, FLORIDA, SIGNAL MOUNTAIN and TRINITY insert "including those of various Federal Agencies and the American Society for Testing Materials."

[6] ALPHA inserts ", and the further result that competition in the quality of the product is not a factor in the market."

[7] ALPHA omits the entire preceding sentence.

[8] PENN-DIXIE substitutes for the entire preceding paragraph the following two paragraphs:

"The method of marketing in the cement industry is neither substantially identical with nor similar to the methods of marketing used in other industries. The term 'multiple basing point methods' has been loosely and incorrectly applied to the method of marketing in the cement industry. The correct description of the marketing method employed is 'destination price method.'

Portland cement is made under standard minimum specifications, with the result that the product of different producers is substantially identical. Cement is a heavy commodity and cannot be economically transported long distances, the average haul being less than 200 miles. Transportation costs play an important if not controlling part in determining the limits of the marketing area of any plant."

Forty or fifty years ago most cement was imported from abroad and moved into the interior from the Atlantic seaboard.[9] Most of it was sold f. o. b. dock, and[10] the buyer paid the freight. The first domestic plant was built in the Lehigh Valley, Pennsylvania, about 1870, and other plants followed rather rapidly. In these early days the chief problem of the domestic producers was to establish the dependability of the domestic product in competition with imported cement which was then well established and generally preferred. The early domestic buyers were usually large contractors and large distributors familiar with freight rates and shipping conditions into the interior. During the early period when domestic plants were largely localized in the Lehigh Valley, cement was generally sold at an f. o. b. mill price. Demand for the product quickly spread into interior points and with this development there naturally followed the establishment of plants at interior points.

As each of these later and differently located cement mills attempted to sell its cement in competition with the older mills, it became apparent that competition was to be found at the market place.[11] The heavy transportation cost made it clear that the cement buyer would select as his source of supply that producer from whom he could secure cement delivered at the point of use—or destination—at the lowest cost to the buyer. Accordingly, the forces of competition in cement shifted from the site of the earlier mills, which were all located in one region, to the places of destination. The general practice of selling cement at destination prices grew, therefore, out of the need of meeting competition at the multitude of destination points.[12]

The Federal Trade Commission (Price Bases Inquiry: The Basing-Point Formula and Cement Prices, March, 1932, p. 29) has found that destination prices for the sale of cement first made their appearance in about 1902.

[9] PENN-DIXIE substitutes for the entire preceding sentence the following sentence: "Forty or fifty years ago, most cement used in the United States was imported from abroad to the Atlantic seaboard."

[10] PENN-DIXIE inserts ", if shipped into the interior,".

[11] PENN-DIXIE substitutes "point of use" for "market place." CONSOLIDATED, FLORIDA, PENN-DIXIE, SIGNAL MOUNTAIN and TRINITY substitute "places of destination" for "market place."

[12] ALPHA inserts the following sentence "This method of selling cement, which has sometimes been called the multiple basing point method of marketing, is in no sense an artificial or arbitrary method in its development or present status."

Therefore this method of pricing has been in[13] use for some thirty-five years.[14] In the case of *Cement Manufacturers Protective Ass'n.* v. *United States*, 268 U. S. 588, 598, the Court said:

"The use of basing points for the purpose of computing freight rates appears not to have been the result of any collective activity on the part of defendants or cement manufacturers generally, nor were they arbitrarily selected. Their use is rather the natural result of the development of the business within certain defined geographical areas."

The method of marketing cement which is in general use today must be judged then as[15] a marketing method going back to the early days of this industry, developing with it[16] and maintaining itself at the present time on the foundation of custom, experience and the best interests of all[17] concerned in the production, sale and use of cement.[18]

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[13] ALPHA, PENN-DIXIE and VOLUNTEER insert "general."

[14] VOLUNTEER inserts "and was in general use when respondent was incorporated and began the manufacture of cement in 1928."

[15] PENN-DIXIE substitutes "is" for "must be judged then as."

[16] ARKANSAS, COLORADO, NEBRASKA, OKLAHOMA, THREE FORKS and UNION substitute "within" for "with it."

[17] CONSOLIDATED, FLORIDA, SIGNAL MOUNTAIN and TRINITY substitute "those" for "all."

[18] PENN-DIXIE inserts the following paragraph:

"This respondent was incorporated in Delaware on September 16, 1926. Thereupon it acquired the assets of four companies which had been long established in the industry, viz.; Clinchfield Portland Cement Corporation, Dexter Portland Cement Company, Dixie Portland Cement Company and Pennsylvania Cement Company. The method of marketing cement which is now generally employed in the industry was the method of marketing which was employed at the time of the incorporation of this respondent, and was also the method of marketing which had been employed by this respondent's predecessors from the time of their respective organization."

General Description of Marketing Method.

The destination price method of marketing[1] to the extent that it prevails[2] in the cement industry today is, as has been seen, in no sense an artificial or arbitrary method in its development or present status.[3]

This method involves, simply stated, the quotation by the seller of a destination price. The producer quotes the price of his product with reference to each delivery point at which it is received by the buyer. It is at the point of use of the cement that the buyer wants to know definitely just how much it will cost him, and it is only at this point that he can[4] conveniently compare quotations by producers whose mills are differently located freightwise. The destination is the market place where the competitive forces converge. In making his price the producer starts with a figure that he believes he is warranted in securing for his product, and adds to it the cost of transportation to destination. If in this way the producer is able to meet the lowest price quoted by any other producer, he is in the market.[5] If, on the other hand, he finds that his price so made is higher than the quoted[6] or anticipated price of a competitor,[7] the producer must then determine whether he can afford to re-

[1] DIAMOND, LEHIGH, LONE STAR and UNIVERSAL ATLAS substitute "so-called multiple basing point" for "destination price."

ASH GROVE, CONSOLIDATED, FLORIDA, MEDUSA, PENN-DIXIE, SIGNAL MOUNTAIN, TRINITY and VOLUNTEER omit "destination price."

BESSEMER substitutes: The so-called multiple basing point method of marketing (which this respondent specifically denies is the same or similar to the multiple basing point method described and referred to in the complaint and used in other industries)," for "The destination price method of marketing."

[2] ASH GROVE, CONSOLIDATED, FLORIDA, MEDUSA, PENN-DIXIE, SIGNAL MOUNTAIN, TRINITY and VOLUNTEER omit "to the extent that it prevails."

MISSOURI substitutes "current" for "to the extent that it prevails."

[3] ALPHA omits the entire preceding paragraph.

[4] PENN-DIXIE omits "conveniently."

[5] PENN-DIXIE adds "and can compete".

[6] PENN-DIXIE substitutes "current" for "quoted".

[7] LEHIGH substitutes "that actually quoted by a competitor or higher than he anticipates a competitor will quote" for "the quoted or anticipated price of a competitor".

ALPHA substitutes "the" of his competitor" for "the quoted or anticipated price of a competitor".

duce his price so made[8] in order to meet a competitive price and remain in the market at the destination.[9]

Before he quotes a price the prospective seller must determine as best he can the prices which have been or which may be quoted by his competitors for delivery at the same destination.[10] The producer often finds that a competitor has previously sold cement at the given destination at a certain price; usually the competitor has announced this price to his own customers,[11] and it soon[12] becomes a matter of general knowledge. The[13] producer[14] assumes that pursuant to long-established trade usage [15] each of his competitors will normally calculate his destination price by the same simple process that he himself uses.[16] The producer can usually determine the figures used by his competitors in calculating their own destination prices by subtracting known transportation rates from several known destination prices of any given competitor.[17]

There are two controlling economic factors that tend to restrain a producer from offering a special price to any customer. The first is that when a producer quotes

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[8] PENN-DIXIE omits "so made".

[9] NATIONAL omits the last sentences of this paragraph from "In making his price the producer starts * * *" and also omits the whole of the paragraph following.

[10] ALPHA substitutes "In doing this the individual producer relies upon his knowledge of long-established trade usage." for the remainder of this paragraph.

PENN-DIXIE inserts "In doing this, the individual producer relies upon his knowledge of the long established method of marketing employed in the industry".

[11] STANDARD inserts "both actual and prospective".

[12] STANDARD substitutes "and almost immediately it" for "and it soon".

[13] STANDARD inserts "If the competitor's destination price at any given destination is not known."

[14] PENN-DIXIE inserts "naturally".

[15] PENN-DIXIE omits "pursuant to long-established trade usage".

[16] ASH GROVE, BESSEMER and MISSOURI omit the entire preceding sentence beginning with "The producer assumes".

PENN-DIXIE adds after "uses", ": that is, by the employment of the method long established in the industry".

[17] ALPHA substitutes "In doing this the individual producer relies upon his knowledge of long-established trade usage." for the last three sentences of this paragraph beginning with "The producer often finds * * *".

LEHIGH and NATIONAL omit the entire preceding paragraph.

STANDARD substitutes for the entire preceding sentence "Knowing the competitor's prices at various other destinations, the producer determines his competitor's probable destination price at the given destination by mere subtraction and addition of the appropriate and known freight rates".

a special price to one customer, all of his customers will demand similar concessions with resulting chaotic conditions in his entire marketing[18] structure. Second, his competitors, in order to meet the market conditions established by that special price, and in ignorance as to how general the price reduction may be, have usually[19] established for themselves corresponding prices[20] which have sometimes resulted in destructive price wars to the serious detriment of the industry and[21] the producer who initiated the low[22] price. Another restraining force is the law against price discrimination. To cut a price in one transaction would[23] subject the seller to a charge of illegal price discrimination, whereas he could not be properly challenged if he reduced his whole price level or if he deviated from his normal prices only in the exercise of his right[24] to meet competition.

It may be said that all that the[25] method of marketing of cement means is this: It is a method of meeting competition in any given market place [26].

Basing Points.

The following companies use a similar form in a Section of the Further Defense entitled "Basing Points," with variations of substances as noted in the footnotes:

Alpha	Dewey
Arkansas	Federal
Colorado	Georgia
Coplay	Giant
Cumberland	Glens Falls

[18] PENN-DIXIE substitutes "disruption of his individual price" for "chaotic conditions in his entire marketing".

[19] MISSOURI substitutes "on frequent occasions in the past" for "usually".

[20] STANDARD substitutes "correspondingly lower prices throughout the marketing area" for "corresponding prices".

[21] ALPHA substitutes "to" for "of the industry and".

[22] MISSOURI substitutes "special" for "low".

[23] ASH GROVE substitutes "To vary a price might" for "To cut a price in one transaction would".

[24] ASH GROVE substitutes "to the extent necessary" for "in the exercise of his right".

[25] MISSOURI inserts "destination price".

[26] PENN-DIXIE substitutes "The method of marketing of cement now generally employed in the industry is simply the logical method which enables a producer to meet competition in any given market place." for the entire preceding paragraph.

CONSOLIDATED, FLORIDA, SIGNAL MOUNTAIN and TRINITY omit the entire two preceding paragraphs.

Green Bag W. Va.	Penn-Dixie
Hawkeye	Petoskey
Hercules	Utah
Hermitage	Standard
Keystone	Superior
Kosmos	Three Forks
Lawrence	Union
Medusa	Universal Atlas
Monarch	Volunteer
Monolith Midwest	Vulcanite
National	Wabash
Nazareth	West Penn
Nebraska	Whitehall
Northwestern States	Wolverine
Oklahoma	

Those mills or plants from which a producer figures destination prices have been for many years[1] referred to[2] as basing points by members of the cement industry and were so referred to by the Supreme Court in *Cement Manufacturers Protective Association* v. *United States*, 268 U. S. 588.[3] There has never been any agreement[4] to establish or[5] maintain one or any number of basing points in this industry. Each producer may at any time make in his own mill or plant[6] a basing point. At the present time there are a great number of basing points scattered throughout the United States and this number has constantly changed.[7]. It is estimated that approximately 75% of the productivity capacity of all cement mills and plants

[1] STANDARD substitutes "frequently" for "for many years."

[2] STANDARD inserts "in the cement industry."

[3] STANDARD omits "by members of the cement industry and were so referred to by Supreme Court in *Cement Manufacturers Protective Association* v. *United States*, 268 U. S. 588."
VOLUNTEER omits entire preceding sentence.

[4] PENN-DIXIE inserts "among producers."
VOLUNTEER substitutes "between this respondent and any other respondent to establish or designate any one or more places as" for "to establish or maintain one or any number of."

[5] STANDARD substitutes "However, to the best of this respondent's knowledge, information and belief, there has never been any understanding or agreement between respondents to" for "There has never been any agreement to establish or."

[6] UNIVERSAL ATLAS inserts "or any other place."
VOLUNTEER substitutes "any other place" for "plant".
ALPHA substitutes "frequently" for "constantly."
MEDUSA, PENN-DIXIE, STANDARD, UNIVERSAL ATLAS and VOLUNTEER substitute "is constantly changing" for "has constantly changed."

in the United States is located at basing points while the remaining productive capacity is in close proximity.

The destination price[8] method of marketing cement does not and never has involved any fixity in the number of basing points or in the status of cement mills as base or non-base mills.[9]

The following companies which employ the general form of Further Defense, have the following form of answer instead of "3. Basing Point":

Consolidated	Signal Mountain
Florida	Trinity

This respondent denies that it has cooperatively employed what is described in the complaint as a multiple basing point method of pricing. It states that cement is generally sold at destination prices within its marketing area, but denies that it is or ever has been a party to or has any knowledge of any mutual understanding, agreement or combination to sell cement at destination prices or at any agreed prices or in any particular manner. This respondent admits that such destination price method has been frequently referred to in the cement industry as a multiple basing point method of pricing, but this respondent states that any such so-called basing points are not arbitrarily determined, have no fixity in number or geographical location, and are not the result of any agreement or understanding or concerted action. In short, this respondent states that it, and, to the best of its information and belief, every other producing respondent within its marketing area, has at all times

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[8] VOLUNTEER omits "destination price."

[9] PENN-DIXIE inserts ", or any agreement, combination or understanding between producers with respect thereto."

STANDARD substitutes "and plants as base or non-base points, nor does this method involve arbitrary determination of such points or the determination of such points by agreement, understanding or concerted action as between respondents or any of them" for "as base or non-base mills."

STANDARD adds: "At all times this respondent and, to the best of its information and belief, every other producing respondent have been free, subject to normal and natural economic limitations, to sell cement at any price and in any manner it chooses."

UNIVERSAL ATLAS inserts: "This respondent alleges that it has at all times been free to determine its selling price of cement in any manner it may choose. On information and belief it alleges that each other respondent has likewise at all times been free to determine its selling price of cement in any manner it may choose."

been free to make any price for, and sell cement in any manner it has chosen, and it and the other producing respondents referred to have so acted. For these and other reasons which will more fully appear in the subsequent proceedings herein, this respondent states that "basing point" terminology has been inaccurately and erroneously used in and as referring to the cement industry, and the destination price method which has generally prevailed in the industry is to be distinguished from single and multiple "basing point systems" such as have prevailed in other industries.

The following companies which employ a Further Defense, do not include any section on "Basing Points":

Ash Grove	Missouri
Bessemer	Peerless
Diamond	Pittsburgh-Columbia
Lehigh	Southern States
Lone Star	Southwestern

Marketing Method Not Unfair Competition.

The following companies use a similar form in Section of the Further Defense entitled "The Destination Price Method of Marketing Cement Does Not Involve an Unfair Method of Competition", with variations of substance as noted in the footnotes:

Alpha	Hawkeye
Arkansas	Hercules
Ash Grove	Hermitage
Bessemer	Keystone
Colorado	Kosmos
Consolidated	Lawrence
Coplay	Lehigh
Cumberland	Lone Star
Dewey	Medusa
Diamond	Missouri
Federal	Monarch
Florida	Monolith Midwest
Georgia	National
Giant	Nazareth
Glens Falls	Nebraska
Green Bag W. Va.	Northwestern States

Oklahoma	Three Forks
Peerless	Trinity
Penn-Dixie	Union
Petoskey	Universal Atlas
Pittsburgh	Volunteer
Utah	Vulcanite
Signal Mountain	Wabash
Southern States	West Penn
Southwestern	Whitehall
Standard	Wolverine
Superior	

To determine whether the destination price method of marketing cement is an unfair method of competition, it is necessary to consider the background of its inception and development throughout the history of this industry and particularly the findings of the Supreme Court of the United States in 1925 in the case of *Cement Manufacturers Protective Association* v. *United States*, 268 U. S. 588. It is a well accepted method of marketing of long standing in this industry. It is openly and honorably used by producers. It contains no elements of fraud, deception or bad faith or other indicia of an unfair method of competition. The quotation by a seller of a destination price for the sale of his product is no more than the exercise of the undoubted right of the seller to determine how he will sell his product.[1]

The criticism that it tends to promote, if it does not inevitably result in, identity of price among competing producers and in that way restrains competition, is not sound.[2] Identity of prices dot not indicate the absence of effective competition in the marketing of cement. Cement, as has been noted, is a standardized product made under standard specifications, and accordingly the buyer will purchase from that producer from whom he can secure cement at the lowest price delivered at destination. The result is that all producers quoting at a given destination must meet competition by matching the lowest price quoted at that destination.[3] Consequently the prices

[1] PENN-DIXIE inserts "It carries with it the sanction of long standing, custom and experience."

[2] PENN-DIXIE omits the entire preceding sentence.

[3] CONSOLIDATED, FLORIDA, SIGNAL MOUNTAIN, and TRINITY omit the entire preceding sentence.

quoted at any particular[4] destination tend to be uniform, —but not because any particular marketing method is employed.[5] Effective competition itself tends to produce a uniform market price[6] at a particular time, but the level of such a price fluctuates from time to time. Any consideration of the level of prices in this industry shows that there have been periods of relative stability in many parts of the country, periods of fluctuations both great and slight, periods of intensive price wars and other typical performances of a price level[7] in competitive markets.

Thus, in the cement industry, the[8] destination price method of marketing results in effective competition and is not an instrument whereby competition is restrained.

What is Price?

The following companies use a similar form in Section of the Further Defense entitled "The Destination Price Method of Marketing Does Not Involve an Illegal Price Discrimination", with variations of substance as noted in the footnotes.

Alpha	Giant
Arkansas	Glens Falls
Ash Grove	Green Bag W. Va.
Bessemer	Hawkeye
Colorado	Hercules
Consolidated	Hermitage
Coplay	Keystone
Cumberland	Kosmos
Dewey	Lawrence
Diamond	Lehigh
Federal	Lone Star
Florida	Medusa
Georgia	Missouri

[4] STANDARD inserts "time and".

[5] STANDARD inserts "and not because of any arrangement, understanding, agreement, or concert of action among the competitors."

[6] MISSOURI inserts "at a particular destination."

[7] PENN-DIXIE substitutes "prices" for "a price level."

[8] ARKANSAS, COLORADO, CONSOLIDATED, FLORIDA, HERCULES, LONE STAR, LEHIGH, MISSOURI, NEBRASKA, OKLAHOMA, SIGNAL MOUNTAIN, STANDARD, THREE FORKS, TRINITY and UNION insert "so-called."

Monarch	Southwestern
Monolith Midwest	Standard
National	Superior
Nazareth	Three Forks
Nebraska	Trinity
Northwestern States	Union
Oklahoma	Universal Atlas
Peerless	Volunteer
Penn-Dixie	Vulcanite
Petoskey	Wabash
Pittsburgh	West Penn
Utah	Whitehall
Signal Mountain	Wolverine
Southern States	

Count II of the Complaint charges the producing respondents with discrimination in price in violation of the Robinson-Patman Act. This violation is alleged to be the result of a combination to employ the so-called multiple basing point method of marketing, as charged in Count I. Unless this method of marketing involves unlawful price discrimination when employed individually by one producer, it is difficult to see how an alleged combination to employ this method can import price discrimination, for a charge of unlawful price discrimination involves a showing that a price made or quoted by a seller in the sale of a commodity is discriminatory and obviously only the individual producer is engaged in actual selling. The consequence is that Count II of the complaint can only be considered in terms of the use of this method of marketing by an individual producer engaged in the sale of cement.[1]

The Robinson-Patman Act simply uses the term "price" without any definition of its meaning. It is noteworthy that the Congress deliberately rejected an attempt so to define the term "price" in the Act as to prohibit methods of selling on the basis of destination prices. This result would have been reached under the definition contained in the Act as reported to the House:

[1] CONSOLIDATED, FLORIDA, SIGNAL MOUNTAIN and TRINITY omit the entire preceding sentence.

"That the word 'price', as used in this Section 2, shall be construed to mean the amount received by the vendor after deducting actual freight or cost of other transportation, if any, allowed or defrayed by the vendor." In the Complaint the Federal Trade Commission has simply attempted to reinstate this provision in the Act by its charge in Paragraph Six of Count II that the "actual prices" or "true price" received by producing respondents can only be determined after deduction of transportation costs. This definition of the term was deliberately rejected by the Congress.

In the cement industry it is clear that the "price" of cement is the amount paid by the buyer. The charge in Paragraph Six of Count II that delivered prices include two items—"the price of cement" and "the price of its transportation" does violence to the language of the Robinson-Patman Act, as well as to the common understanding of the term "price". The producer, when quoting a destination price, quotes an amount, determined by the forces operative in a competitive market, that the buyer is required to pay to secure the cement. Out of that amount the producer strives to realize the cost of producing the cement—and this will include cost of labor, raw materials, power, management, etc.—the cost of selling it, capital costs, general overhead, insurance, taxes, and many other items, as well as the cost of transportation to destination. In addition, the producer will strive to realize a profit. Transportation is, then but one of many items of cost necessarily incurred in putting the finished product into the hands of the buyer at destination.

The position of this respondent is simply stated. The "price" paid for cement is the amount paid by the buyer. That is the common understanding of the term "price". When a destination price is quoted, whether pursuant to a so-called multiple basing point method or any other method of marketing,[2] the cost of transportation is simply one of its elements.

The only discrimination in price charged in the Complaint is based upon an erroneous definition of the term "price". It follows from the foregoing that the charge

[2] PENN-DIXIE omits "whether pursuant to a so-called multiple basing point method or any other method of marketing."

under Count II cannot be sustained under the Robinson-Patman Act.[3]

Imported Cement.

The following companies use a similar form in a Section of the Further Defence entitled "Competition With Imported Cement", with variations of substance as noted in the footnote:

Alpha	Medusa
Ash Grove	National
Consolidated	Nazareth
Coplay	Utah
Cumberland	Signal Mountain
Florida	Southern States
Georgia	Southwestern
Giant	Standard
Glens Falls	Trinty
Hercules	Universal Atlas
Hermitage	Volunteer
Keystone	Vulcanite
Lawrence	West Penn
Lehigh	Whitehall
Lone Star	

"This respondent has continued the use of the destination price system of marketing to the present time, because it found it necessary to do so in order to acquire and to keep customers at the various points in its marketing area. Through its salesmen and dealers, this respondent has kept itself informed of cement prices being offered currently by respondent's competitors at various points within respondent's marketing area, and of any fluctuations or changes in such prices from time to time. Respondent's pricing policy has consistently been that of meeting competition by following and

[3] STANDARD substitutes for the entire preceding paragraph a section entitled: "7. This Respondent's Marketing Methods" as follows:

"This respondent was incorporated in 1925, and thereupon began to manufacture and market cement in the marketing area adjacent to its plant at Painesville, Ohio. At the time it began to sell its cement, it found that the destination price method of marketing cement was being followed universally throughout its marketing area by all producers manufacturing or selling cement therein. Thereupon this respondent began to sell its product using the destination price method, since it found that all prospective purchasers of cement were familiar with and accustomed to that method, and that sales in any volume could not be made if any other method were used. The institution and continuance of such destination price method by this respondent was, has been, and is without any arrangement, understanding, agreement or concerted action with any other cement producers, any respondent, or any other person whatsoever.

The competition of cement imported from abroad affords a striking illustration of the sensitiveness of the marketing methods of the industry to competitive conditions prevailing in different marketing territories.[1]

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quoting the lowest prices so found to be prevailing at the various points of destination within its said area, without in any way assuming the role of a price-leader. The quotations made by this respondent in connection with all its sales have been and are arrived at in the foregoing manner, without any arrangement, understanding, agreement or concerted action with any other cement producer, any other respondent or any other person whatsoever, and without any accurate knowledge of quotations being made by respondent's competitors other than that collected by respondent in the field."

VOLUNTEER inserts a new section entitled: "7. This Respondent's Marketing Method" as follows:

"Further answering, and describing the method which this respondent has adopted and followed for pricing its cement for sale, this respondent avers that in the sale of its cement it is in open and independent competition with other producers of cement, whether they be members of the Institute or not. It avers that in quoting prices to prospective buyers, wherever located, it undertakes to make sales at a price which will yield respondent a satisfactory net return, taking into consideration the cost of production, marketing and transportation. But, since cement is a standardized product, the buyer normally will not pay one cent more for respondent's cement than for a substantially identical competitive cement. Therefore respondent can only sell its cement by meeting the lowest price quoted by any competitor at any given destination.

Respondent's mill is what is known to the trade as a non-base mill, that is to say, respondent does not base its destination price on its own mill and it does not set the price of cement at any destination. On the contrary, before quoting any destination price, respondent ascertains, through such sources of information as may be available, the prevailing price set by other producers at such destinations, and then exercises its independent judgment as to whether it will meet the prevailing price at such destination or refrain from bidding.

This respondent's mill is located in a marketing area which is served by a number of competing cement producers, and as a result is constantly under the necessity of meeting their competition. Respondent strives to sell the cement it produces at such prices as will enable it to realize what it considers a fair average mill net therefor, and, if after ascertaining the prevailing price set by other producers at any given destination, respondent determines that it can meet such destination price and still maintain a fair average mill net on its product, it enters in competition with the other producers of cement by quoting the same price on its product at any given destination as has been set by other producers; otherwise respondent refrains from bidding, and therefore is not in the market at such destination. In other words, this respondent meets competition just as it finds it in any given market, or else refrains from entering such market; and in determining what markets it will enter and what markets it will refrain from entering in competition with other producers of cement this respondent exercises its independent judgment and is not controlled, affected or influenced by any agreement or understanding with any other producer or group of producers of cement."

[1] PENN-DIXIE omits the entire preceding sentence.

Competition with imported cement has long been a serious problem to certain domestic producers. The most serious impact has been felt in Atlantic and Gulf ports,[2] where foreign cement has affected producers serving these markets. The import problem cannot be judged by a comparison of total imports with total domestic production, since this impact is definitely localized. Because of the low wages paid by foreign producers and of the cheap ocean freight rates of foreign ships, foreign cements is often sold in these markets at less than out-of-pocket[3] cost of domestic producers. That is, at a price which, generally applied to all sales, would force domestic producers out of the market if not entirely out of business.[4] At the same time, the territories in which this foreign cement is sold are all important markets for[5] many domestic producers.[6] The result is that cement prices for delivery to these destinations have frequently represented actual losses to domestic producers.[7]

The following companies which employ a further defense omit entirely the paragraph entitled: "Competition with Imported Cement":

Arkansas	Kosmos
Bessemer	Missouri
Colorado	Monarch
Dewey	Monolith Midwest
Diamond	Nebraska
Federal	Northwestern States
Green Bag W. Va.	Oklahoma
Hawkeye	Peerless

[2] SOUTHWESTERN substitutes "Atlantic, Gulf and some Pacific Coast ports" for "Atlantic and Gulf ports."

[3] CONSOLIDATED, FLORIDA, SIGNAL MOUNTAIN and TRINITY substitute "manufacturing and distributing" for "out-of-pocket."

[4] LEHIGH inserts "with consequent loss to their many stockholders and employees."

[5] CONSOLIDATED, FLORIDA, SIGNAL MOUNTAIN and TRINITY substitute "markets of the utmost importance to" for "all important markets for."

[6] PENN-DIXIE inserts "including this respondent."

[7] PENN-DIXIE omits the last sentence and adds:

"Unless the domestic producer meets the foreign competition he will inevitably be driven from these markets, because foreign cement will be imported in ever increasing quantities. To preserve his position in the Atlantic and Gulf markets, the domestic producer meets the lower price of the foreign competitor even though the competitive price level results in actual loss to him."

Petoskey
Pittsburgh-Columbia
Superior
Three Forks
Union
Wabash
Wolverine

Conclusion.

The following companies use a similar form in a Section of the Further Defense entitled "Conclusion", with variations of substance as noted in the footnotes:

Alpha
Arkansas
Ashgrove
Bessemer
Colorado
Coplay
Cumberland
Dewey
Diamond
Federal
Georgia
Giant
Glens Falls
Green Bag W. Va.
Hawkeye
Hercules
Hermitage
Keystone
Kosmos
Lawrence
Lehigh
Lone Star
Medusa
Missouri
Monarch
Standard
Superior
Three Forks
Union
Universal Atlas
Volunteer
Monolith Midwest
National
Nazareth
Nebraska
Northwestern States
Oklahoma
Peerless
Penn-Dixie
Petoskey
Pittsburgh
Utah
Southern States
Southwestern
Vulcanite
Wabash
West Penn
Whitehall
Wolverine

UNIVERSAL ATLAS inserts at this point a section entitled: "7. This respondent expressly denies that it uses any unfair method of competition within the intent and meaning of the Federal Trade Commission Act under which the Commission has filed the complaint herein.

"This respondent alleges that it and all, or substantially all, of the producers of cement who sell cement in the territory where this respondent sells the cement produced by it, use the destination price system of marketing cement

as above described; that each uses that system because it believes that it enables it to conduct its business in a more efficient and a more orderly way and to the advantage of itself and to the advantage of the purchasing public; that the system enables each producer to handle its business and to compete with other producers of cement with better comprehension and more intelligently; that this respondent has not, and, as this respondent is informed and believes the several producers have not, entered into any agreement or understanding with any other producer or producers that they will use that system; that each is free to abandon the system at any time that it concludes that it will be to its advantage so to do; that the system has been generally followed freely and voluntarily for more than 35 years and that during that time competition between the producers of cement has not decreased but has largely increased. This respondent specifically denies that it, in following the said destination price system, injures any competitor or in any way lessens or injures the business of any competitor, but alleges that it strives to sell cement in a manner which is free and open and in competition with other producers who are likewise striving to sell their cement."

The[1] prevailing methods of marketing cement have not resulted in unreasonably high prices nor have they injured competitors or buyers[2] or the public.

The public interest is best protected by the long-established practice of meeting competition in the sale of cement. In marketing a standard and heavy commodity like cement it is possible to meet competition only by quoting destination prices. The alternative method of quoting f. o. b. mill prices obscures the competitive facts and obstructs the free play of competitive forces. If the further requirement is imposed that each producer must have a uniform f. o. b. mill price for all customers competition is drastically curtailed.[3]

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[1] ALPHA and LEHIGH insert before this paragraph a paragraph reading as follows: "Cement prices have not been excessive, and this, in part, is demonstrated by the very low return on invested capital which has been so typical of the cement industry."

VOLUNTEER inserted before "The prevailing methods • • •" the following sentence: 'Cement prices have not been excessive."

[2] LEHIGH inserts "employees".

[3] STANDARD adds "and many of the smaller cement producers will be driven out of business."

The logic and result of the Federal Trade Commission's aim, as disclosed in this complaint, would be to foster monopoly. To require each producer to net the same amount at his mill on every sale would cause a drastic shrinkage in the market of each mill and to that extent it would reduce competition. Furthermore the Commission's aim would guarantee to each mill or group of mills a zone where monopolistic power would prevail.

Furthermore, by applying the rule of *stare decisis* to the decision in the case of *Cement Manufacturers Protective Association* v. *United States*, 268 U. S. 588, this respondent submits that all of its marketing practices have been specifically approved by the Supreme Court of the United States and that they are legal and do not contravene the Federal Anti-Trust Laws.

The following companies use a similar form of "Conclusion":

Consolidated	Signal Mountain
Florida	Trinity

That prevailing methods of marketing cement and quoting prices for that product have not resulted in bringing about excessively high prices with resulting high profits to cement manufacturers is clearly established by the low return on the capital invested in the cement industry in this country during the past two decades. Not only has the return on such invested capital been lower than in most basic industries in this country but the annual turn-over of such capital is lower, being in many instances less than 50% per annum of such invested capital.

The public interest is best protected by the long-established practice of meeting competition in the sale of cement. In marketing a standard and heavy commodity like cement, it is possible to meet competition only by quoting destination prices. The method of quoting uniform f. o. b. mill prices for all customers by each producer would obstruct the free play of competitive forces and drastically curtail competition.

The adoption of the price and marketing policies apparently advocated by the Commission would foster monopoly. To require each producer of cement to quote the same price at his mill on every sale would cause a drastic shrinkage in the market area of each mill, and

thereby would reduce competition. Furthermore, the price method advocated by the Commission would result in certain producers having dominance of the market in a given area surrounding their mills. Because of transportation costs, competition from mills without this area could occur only at prices which would result in the destruction of the business of competing mills.

Furthermore, in the case of *Cement Manufacturers' Protective Association* v. *United States*, 268 U. S. 588, all of this respondent's marketing practices were specifically approved by the Supreme Court of the United States and they are legal and do not contravene the Federal Anti-Trust Laws.

Plea of Lack of Jurisdiction Under Count II.

As a defense to Count II of the Complaint, the Count charging a violation of the Clayton Act, this respondent pleads that under the facts alleged in said Count the Commission is without jurisdiction to enter any cease and desist order against this respondent.

Under Section 11 of the Clayton Act authority to enforce compliance with Sections 2, 3, 7 and 8 of said Act is vested in the Commission; Sections 3, 7 and 8 are not applicable to the facts alleged in Count II. Section 2 (a), as amended by the Robinson-Patman Act, applies only where there is a discrimination in price between different purchasers of commodities and "where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce or to injure, destroy or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers or either of them." No facts are alleged in Count II which can possibly bring the case within the jurisdiction of the Commission and therefore the charge should be dismissed.

III. Companies Not Using a Further Defense.

The following companies did not submit a Further Defense.

Aetna	Castalia
Beaver	Edison
Calaveras	Great Lakes
California	Huron

Idaho
Monolith
North American
Northwestern
Oregon
Pacific
Riverside
Santa Cruz
Superior, Inc.
Valley Forge
Yosemite

IV. Non-Uniform Further Defenses.

GREEN BAG, PA. submits a Further Defense as follows:

Further Defense.

As a further defense to the complaint, this respondent sets forth the following statement:

This respondent has taken a very small part in the activities of The Cement Institute. It has no knowledge of any of the allegations made in the complaint regarding alleged activities of the Institute directed towards carrying out a system of pricing. It has paid dues to The Cement Institute, and in return has received the various publications and statistical studies of the Institute. It has not advised the Institute of its selling policies, nor received advice from the Institute as to the selling policies of others.

Respondent has not entered into any understanding with others as to any method of selling cement. It has sought to be informed as to prevailing freight rates and quotations made by competitive manufacturers. It has received no assurances that its competitors will not deviate for any time from any prices quoted.

This respondent has not sought to extend its sales nationally, as this would require respondent either to quote prices higher than those that prevail in distant markets or the absorption of excessive freight charges. In disposing of its production of cement, however, this respondent has had to extend its solicitation of sales to territories where a competitive plant has been quoting a price lower than that prevailing at the destination in some nearby territories. While it would prefer to sell all of its cement close to its plant, the practical exigencies of the cement business have required it to secure orders at the best available price in some instances at a distance from its plant. It is contrary to the respondent's independent

business judgment to seek business at less than the market price as it has found it, as this would merely entail a narrowing of its profit margin and possibly retaliation by competitive producers. This respondent denies that it has any understanding with any competitors that, in return for its not quoting lower prices, they will refrain from retaliation, but it is plain common sense that such retaliation might well be the effect of respondent's seeking to obtain business by price-cutting tactics. The respondent avers that its policy of meeting market conditions as it finds them does not violate the Robinson-Patman Act. The aforesaid selling policy of respondent has not been adopted by coercion or at the suggestion of others, but represents its best independent business judgment of how to dispose of cement profitably under the unfavorable conditions that have long affected the industry and the Pittsburgh territory in particular.

SPOKANE submits a Further Defense as follows:

Further Defense.

As a separate and affirmative defense to Counts I and II, this respondent avers:

I.

That there formerly existed under the laws of the State of Washington a corporation having the corporate name of Spokane Portland Cement Company, which corporation shall for convenience be hereinafter referred to as the "Old Company."

II.

That on or about the 10th day of February, 1937, said Old Company changed its name to International Portland Cement Company, Limited, by amendment to its Articles of Incorporation. On the 5th day of May, 1937, it sold, assigned, transferred and set over to this respondent all of its assets of every kind, character and description.

III.

That prior to service of the complaint herein, to-wit, on the 14th day of May, 1937, said Old Company went into voluntary dissolution in the manner prescribed by the laws of the State of Washington and is now completely dissolved.

IV.

That this respondent was incorporated under the laws of the State of Washington on the 5th day of February, 1937, and did not engage in the business of manufacturing and selling cement until the 5th day of May, 1937.

V.

That the acts alleged in the complaint if committed, were committed by said Old Company and not by this respondent.

"WHEREFORE" CLAUSE.

COMPLAINT.

Wherefore, The Premises Considered, the Federal Trade Commission on the 2nd day of July, A. D. 1937, now here issues this its complaint, comprising Counts I and II, against said respondents stating its charges in such respect as hereinabove set out.

ANSWERS.

I. Form of Answer Used by The Cement Institute and Certain Producers.

THE CEMENT INSTITUTE and the following companies use a similar form, with variations of substance as noted in the footnotes:

Alpha	Diamond
Arkansas	Edison
Ash Grove	Federal
Bessemer	Florida
California	Georgia
Castalia	Giant
Colorado	Glens Falls
Consolidated	Great Lakes
Coplay	Green Bag Pa.
Cumberland	Green Bag W. Va.
Dewey	Hawkeye

Hercules	Peerless
Hermitage	Penn-Dixie
Huron	Petoskey
Idaho‡	Pittsburgh
Keystone	Utah
Kosmos	Signal Mountain
Lawrence	Southern States
Lehigh	Southwestern
Lone Star	Spokane
Medusa	Superior
Missouri	Superior, Inc.
Monarch	Three Forks
Monolith	Trinity
Monolith Midwest	Union
National	Universal Atlas
Nazareth	Valley Forge
Nebraska	Volunteer
North American	Vulcanite
Northwestern	Wabash
Northwestern States	West Penn
Oklahoma	Whitehall
Oregon	Wolverine

Wherefore,[1] this respondent respectfully prays that the complaint of the Federal Trade Commission, in this proceeding, both as to Count I and as to Count II thereof, be dismissed.

‡ IDAHO amended answer.

[1] GIANT inserts before the "Wherefore" clause a Plea of Lack of Jurisdiction, as follows:

Plea of Lack of Jurisdiction Under Count I.

As a defense to Count I of the Complaint, the Count charging a violation of the Federal Trade Commission Act, this respondent pleads that under the facts alleged in said Count the Commission is without jurisdiction to enter any cease and desist order against this respondent.

Plea of Lack of Jurisdiction Under Count II.

As a defense to Count II of the Complaint, the Count charging a violation of the Clayton Act, this respondent pleads that under the facts alleged in said Count the Commission is without jurisdiction to enter any cease and desist order against this respondent.

II. Second Form of Answer Used by Certain Producers.

The following companies used a similar "Wherefore" clause with variations of substance as noted in the footnotes below:

Aetna	Santa Cruz
Calaveras	Yosemite
Pacific	

Wherefore, this respondent prays that the said complaint, and each count thereof may be dismissed[1]

III. Non-Uniform Answers.

A. BEAVER employs the following "Wherefore" clause:

Wherefore, having fully answered the complaint in the above entitled matter, this respondent prays that the complaint be dismissed as to it.

B. IDAHO* employs the following "Wherefore" clause:

Wherefore, the respondent Idaho Portland Cement Company submits that, so far as this Company is concerned, it has not engaged in any acts of unfair competition as alleged in the complaint and the respondent Idaho Portland Cement Company respectfully requests that the charges set forth in Counts I and II of the complaint Docket No. 3167, be dismissed as to this company.

C. RIVERSIDE employs the following "Wherefore" clause:

Wherefore, it is respectfully prayed that the complaint be dismissed.

E. STANDARD omits "Wherefore" clause entirely.

[1] AETNA omits ", and each count thereof may."

* Original answer.

SIGNATURES.

Respondent	Signing Attorneys
The Cement Institute	Donovan, Leisure, Newton & Lumbard
Aetna	Ben W. Calvin (Vice President and Gener Manager), and Bulkley, Ledyard, Dickinson Wright
Alpha	Donovan, Leisure, Newton & Lumbard, an Porter & Taylor
Arkansas	Donovan, Leisure, Newton & Lumbard
Ash Grove	Donovan, Leisure, Newton & Lumbard, Cliffo Histed, and L. T. Sunderland (President of t Company)
Beaver	Alfred A. Hampson and Donovan, Leisure, Newton & Lumbard
Bessemer	Donovan, Leisure, Newton & Lumbard, an Harrington, Huxley & Smith, and G. G. Tre (President of the Company)
Calaveras	Chickering & Gregory per Walter C. Fox, J and Donovan, Leisure, Newton & Lumbard pe William J. Donovan
California	Call & Murphey per Robert B. Murphey, an Donovan, Leisure, Newton & Lumbard pe William J. Donovan
Castalia	Donovan, Leisure, Newton & Lumbard
Colorado	Donovan, Leisure, Newton & Lumbard
Consolidated	Donovan, Leisure, Newton & Lumbard, an Sidley, McPherson, Austin & Burgess pe Donald F. McPherson and Howard Neitzert
Coplay	Donovan, Leisure, Newton & Lumbard
Cumberland	Donovan, Leisure, Newton & Lumbard
Dewey	Donovan, Leisure, Newton & Lumbard
Diamond	Donovan, Leisure, Newton & Lumbard, an William Simpson
Edison	Roger Hinds
Federal	Donovan, Leisure, Newton & Lumbard
Florida	Donovan, Leisure, Newton & Lumbard, an Sidley, McPherson, Austin & Burgess per Don ald F. McPherson and Howard Neitzert
Georgia	Donovan, Leisure, Newton & Lumbard
Giant	Donovan, Leisure, Newton & Lumbard
Glens Falls	Donovan, Leisure, Newton & Lumbard
Great Lakes	Donovan, Leisure, Newton & Lumbard
Green Bag Penna.	Blackwell Smith of Wright, Gordon, Zachry Parlin

espondent	Signing Attorneys
reen Bag W. Va.	Donovan, Leisure, Newton & Lumbard.
awkeye	Donovan, Leisure, Newton & Lumbard
ercules	Donovan, Leisure, Newton & Lumbard
ermitage	Donovan, Leisure, Newton & Lumbard
uron	Hal H. Smith and S. T. Crapo (Vice President of the Company)
daho‡	Raymond Enloe (Secretary-Treasurer of the Company)
eystone	Donovan, Leisure, Newton & Lumbard.
osmos	Donovan, Leisure, Newton & Lumbard
awrence	Donovan, Leisure, Newton & Lumbard
ehigh	Donovan, Leisure, Newton & Lumbard and Milbank, Tweed, Hope & Webb
one Star	Donovan, Leisure, Newton & Lumbard and Chadbourne, Wallace, Parke & Whiteside
edusa	Donovan, Leisure, Newton & Lumbard, and Thompson, Hine & Flory
issouri	Donovan, Leisure, Newton & Lumbard, Theodore Rassieur, and John W. Mather
onarch	Donovan, Leisure, Newton & Lumbard
onolith	Donovan, Leisure, Newton & Lumbard and W. D. Burnett
onolith Midwest	Donovan, Leisure, Newton & Lumbard and W. D. Burnett
ational	Donovan, Leisure, Newton & Lumbard and Scrivener, Dominick & Smith
azareth	Donovan, Leisure, Newton & Lumbard
ebraska	Donovan, Leisure, Newton & Lumbard
orth American	Beekman, Bogue, Leake, Stephens & Black per Eugene W. Leake
orthwestern	Weter, Roberts & Shefelman per Harold Shefelman
orthwestern States	Donovan, Leisure, Newton & Lumbard
klahoma	Donovan, Leisure, Newton & Lumbard
regon	Donovan, Leisure, Newton & Lumbard
acific	Donovan, Leisure, Newton & Lumbard and Pillsbury, Madison & Sutro
eerless	Donovan, Leisure, Newton & Lumbard
enn-Dixie	Donovan, Leisure, Newton & Lumbard and Shearman & Sterling
etoskey	Donovan, Leisure, Newton & Lumbard

‡ IDAHO in its amended answer has Donovan, Leisure, Newton & Lumbard as attorneys.

Respondent	Signing Attorneys
Pittsburgh	Donovan, Leisure, Newton & Lumbard
Utah	Donovan, Leisure, Newton & Lumbard
Riverside	O'Melveny, Tuller, & Myers, Donovan, Leisure, Newton & Lumbard and Garner A. Becket (President of the Company)
Santa Cruz	Morrison, Hohfeld, Forester, Shuman & Clark per Herbert W. Clark, and Donovan, Leisure, Newton & Lumbard per Wm. J. Donovan
Signal Mountain	Donovan, Leisure, Newton & Lumbard and Sidley, McPherson, Austin & Burgess per Donald F. McPherson and Howard Neitzert
Southern States	Donovan, Leisure, Newton & Lumbard
Southwestern	Donovan, Leisure, Newton & Lumbard and Richard F. Burges
Spokane	Donovan, Leisure, Newton & Lumbard
Standard	Donovan, Leisure, Newton & Lumbard, Reed, Smith, Shaw & McClay and W. A. Davis (Vice President of the Company)
Superior	Donovan, Leisure, Newton & Lumbard and E. G. Millar
Superior, Inc.	Stratton, Leader, Little & Stratton per Herbert Little
Three Forks	Donovan, Leisure, Newton & Lumbard
Trinity	Donovan, Leisure, Newton & Lumbard and Sidley, McPherson, Austin & Burgess per Donald F. McPherson and Howard Neitzert
Union	Donovan, Leisure, Newton & Lumbard
Universal Atlas	Kemper K. Knapp and John H. Hershberger, Attorneys, and Blaine S. Smith (President of the Company) whose signature is attested by O. N. Midahl, (Secretary of the Company)
Valley Forge	Donovan, Leisure, Newton & Lumbard
Volunteer	Donovan, Leisure, Newton & Lumbard and Cate, Smith & Long
Vulcanite	Donovan, Leisure, Newton & Lumbard
Wabash	Donovan, Leisure, Newton & Lumbard
West Penn	Donovan, Leisure, Newton & Lumbard
Whitehall	Donovan, Leisure, Newton & Lumbard
Wolverine	Donovan, Leisure, Newton & Lumbard and Cowell & Frankhauser
Yosemite	Earl, Hall & Gerdes per Chaffee E. Hall, Robert H. Gerdes and Herbert W. Clark, and Donovan, Leisure, Newton & Lumbard per Wm. J. Donovan

UNITED STATES OF AMERICA.

In the Matter of
The Cement Institute,
an unincorporated association,
et al.
} Docket No. 3167.

ANSWER OF THE RESPONDENT MARQUETTE CEMENT MANUFACTURING COMPANY.

(Received Sept. 27, 1937.)

Comes now, by its Attorneys, Edward A. Zimmerman and Harold W. Norman, Marquette Cement Manufacturing Company, and reserving to itself the right to move to dismiss the complaint herein for lack of jurisdiction or for any other insufficiency which may hereafter appear, answers the complaint of the Federal Trade Commission herein as follows:

Answer to Count I of the Complaint.

Paragraph One: Answering Paragraph One the respondent concedes the facts alleged in Paragraph One of the complaint, except as to the statements therein that the respondent Institute "operates through its officers, trustees, committees, bureaus and other agents," that "its membership is divided into Northeastern, Southeastern, Chicago and Kansas City divisions, each with its office," and that "It is a trade association formed for the promotion of the mutual interests of its members," which allegations are specifically denied, and in this regard further answering, this respondent says: It was not at any time a member of or affiliated in any manner with the respondent Cement Institute prior to the 15th day of June, 1933, on which date, intending to comply with the patriotic appeal of the President of the United States to enter into a so-called "Reemployment Agreement" and to do its part under the National Industrial Recovery Act toward the formulation and adoption of a code of fair competition for the Industry, being informed that various other members of the Industry were joining the Cement Institute for similar purposes and having before it a copy of the Articles of Association of the respondent Institute, relying thereon, and only for the purposes aforesaid, it did become a member of the Institute and has remained a member until this date. The Articles of Association of the Ce-

ment Institute above referred to, show it to be constituted as a body with only limited powers and purposes. The powers, as provided in said Articles, were and are to be exercised solely by a Board of Trustees in meetings duly assembled and the purposes were and are those set forth in the said Articles and no others. Nowhere in the said Articles of Association is there any provision for the delegation of any powers granted to the trustees to any officer, individual, trustee, committee, bureau or other agent, and this respondent therefore denies that any officer, individual, trustee, committee, bureau or other agent of the Institute, since it became a member thereof, has had or now has any power to bind the Institute, or the members thereof, as to any matter affecting the policy, functions, or operations of the Institute.

Paragraph Two: Answering Paragraph Two this respondent admits that it is engaged in interstate commerce in the sale of cement and that it is in competition with such of the other "producing respondents" as from time to time sell cement in the territory served by this respondent. This respondent denies that such competition has in any manner been hindered, lessened, restricted or restrained. This respondent further denies that the Institute is, or has been, at any time engaged in aiding this respondent, or within the knowledge of this respondent, in aiding any other one or more of the "producing respondents," in carrying out any unlawful method or any method which directly or indirectly or substantially affects competition among members of the Institute, so as to hinder, lessen, restrict or restrain it.

Paragraph Three: This respondent concedes the allegations of Paragraph Three, except that it denies the statement therein that "the carriage charges, for an overwhelming portion of sales, constitute a substantial part of the cost to the customer" and denies the statements in Paragraph Three relating to the fractional amounts of the cement produced in the United States being purchased and used for various purposes.

Paragraph Four: This respondent denies each and every allegation of Paragraph Four.

Paragraph Five: Answering Paragraph Five this respondent denies that it has cooperatively employed what is described in the complaint as a multiple basing point method of pricing. It states that cement is generally sold

at destination prices within its marketing area, but denies that it is or ever has been a party to or has any knowledge of any mutual understanding, agreement or combination to sell cement at destination prices or at any agreed prices or in any particular manner. This respondent admits that such destination price method has been referred to as a "multiple basing point method of pricing" and that the mills which have from time to time assumed price leadership have been frequently referred to in the industry as "basing points," but this respondent is informed and believes and therefore states that any such so-called basing points are not arbitrarily determined, have no fixity in number or geographical location and are not the result of any agreement or understanding or concerted action. In short, this respondent states that it, and, to the best of its information and belief, every other producing respondent within its marketing area, has at all times been free to make any price for, and sell cement in any manner it has chosen, and it and the other producing respondents referred to have so acted. For these and other reasons which will more fully appear in the subsequent proceedings herein, this respondent states that "basing point" terminology has been inaccurately and erroneously used in, and as referring to, the cement industry, and the destination price method which has generally prevailed in the industry is to be distinguished from single and multiple "basing point systems" such as have prevailed in other industries.

Except as hereinabove set forth, this respondent denies each and every allegation in Paragraph Five.

Paragraph Six: Answering Paragraph Six this respondent has no knowledge of the fourteen illustrative examples of alleged identical bids received by various branches of the Federal government from producing respondents except the first and the fifth examples referring to a project at Fort Peck, Montana, and at Vicksburg, Mississippi. Further answering, this respondent denies that the allegation of Paragraph Six relating to the project at Fort Peck, Montana, is a typical or illustrative example of uniform and delivered prices under any method of pricing, but on the contrary alleges that as to this project the bids were submitted at a time when the National Industrial Recovery Act was in full force and effect as was also the Code of Fair Competition adopted and approved under said Act for the cement industry, that the land grant

rates applicable to the bids on said project were set forth in the proposals submitted by the War Department, that a destination cost bid had been filed with the Code Authority under said Code by one of the producers and published according to the provisions of the Code so that it was open and known to all producers prior to the making of the respondent's bid and other bids and that respondent, in bidding on said project was merely meeting the bid so filed by one of its competitors.

Further answering in this regard, with reference to the project at Vicksburg, Mississippi, the respondent denies that the several bids were identical as alleged in the complaint.

Further answering Paragraph Six, the respondent denies that it has ever requested or that it has ever withdrawn any bid which it has made to the Federal government. This respondent is without knowledge of the other allegations of fact and instances cited in Paragraph Six of the complaint and except as hereinabove set forth, this respondent denies each and every allegation of Paragraph Six.

Paragraph Seven: Answering Paragraph Seven this respondent, having denied the combination averred in Paragraphs Four and Five of the complaint, further denies that it has used any means or has followed any practices in pursuance or in support of the combination averred in Paragraphs Four and Five of the complaint or any other combination whatsoever. Further answering Paragraph Seven as to sub-paragraph (a) thereof, this respondent concedes that it has received from the Cement Institute from time to time books containing all rail freights on cement showing the carload rate on cement from shipping points within and outside the state to the various cities, towns and other points of possible destination within the territory within which it operates and sells cement, but it has not made and is not now making any use thereof for the purpose of arriving at a price for the sale or for sale of any cement. Further answering in this regard, this respondent says that it has for many years last past, long antedating its membership in the Institute, continuously maintained its own traffic department, which did and still does continuously collect and assemble the official tariffs relating to the rates of freight on cement in the territory in which this respondent has operated and does operate;

that its traffic department has made up from the official freight rates approved by the Commerce Commissions, freight rate books for the sole use of its employees and that it has not in any wise made any use of any freight rate book published by the Institute, or any amendment or supplement thereto published by the Institute. This respondent further answering in this regard, admits that the freight rate schedules from time to time published by the railroads or traffic associations of railroads are a matter of great complexity and intricacy and that thousands of rates are given in the freight rate books and that therefore it has been and still is necessary for freight rates on shipments of cement to be figured by experienced experts such as respondent has for many years last past employed; that for the reasons in the complaint and herein set forth, it would be practically and economically impossible for contractors, dealers and other average customers such as those who purchase this respondent's cement to make accurate use of the freight rate schedules published by the railroads or freight rate bureaus for the railroads.

Further answering as to sub-paragraph (d) of Paragraph Seven of Count I of the complaint, this respondent admits that the Federal government has expended large sums of money for cement in the West and in certain parts of the South, where it is entitled to reduced railroad freight rates under land grant acts of Congress; that these rates have never been published for general distribution; that in many instances they are not precisely known to commercial shippers including marketers of cement, and are often highly difficult of determination and frequently in dispute; but this respondent denies that such expenditures by the Federal government have only been under recent acts of Congress appropriating money for emergency and other expenditures, as alleged in the complaint, and on the contrary respondent alleges that such purchases have been made by the Federal government for many years last past, and in fact in the territory in which this respondent operates in larger amounts in former years than recently. This respondent further alleges that the files of the Federal government and information peculiarly within its possession, and open to it, would have made it possible to clarify greatly, and substantially to determine and set forth in publication accurate rates to be determined from such land grant acts.

This respondent denies that it has individually, or in agreement or in combination with others, thwarted or made any efforts to thwart the efforts of the Government officials to secure f. o. b. mill prices on cement at any time, and it further alleges that the Government has always had it in its power to obtain the full benefit of such land grant rates; and it further alleges that this respondent has to the best of its ability cooperated with and aided the Government of the United States and its officials in obtaining such maximum benefits. This respondent states that it has sometimes in bidding on cement in land grant territories to the Federal Government inserted in its bids a provision permitting the Government to deduct from the destination cost shown in such bids the actual amount of freight to be paid by the Government, and respondent states that it has also frequently quoted prices on and sold cement to the Federal Government on an f. o. b. mill basis.

Further answering as to sub-paragraph (e) of Paragraph Seven of Count I of the complaint, this respondent denies each and every allegation therein contained; and, further answering the said sub-paragraph, respondent alleges that it never in combination with any others consented to or made any attempt or effort toward the adoption, retention, or reestablishment of any code provision or other agreement or plan establishing or requiring a division of customers into classes, dividing such customers into those who were to be sold cement direct and those to whom cement producers would be prohibited from selling direct.

Further answering, this respondent states that except as hereinabove set forth this respondent denies each and every allegation of sub-paragraphs (a), (b), (c), (d), (e), (f) and (g) of Paragraph Seven.

As to sub-paragraph (h), this respondent is not engaged in selling cement in any seaboard centers and has no knowledge of the allegations in the said sub-paragraph contained and therefore denies the same.

This respondent denies each and every allegation contained in sub-paragraph (i) and (j) of Paragraph Seven.

Paragraph Eight: This respondent denies each and every allegation of Paragraph Eight.

Paragraph Nine: This respondent denies each and every allegation of Paragraph Nine.

Paragraph Ten: This respondent denies each and every allegation of Paragraph Ten.

Paragraph Eleven: This respondent denies each and every allegation of Paragraph Eleven.

Except as hereinabove set forth, this respondent denies each and every allegation of Count I of the complaint.

Answer to Count II of the Complaint.

As Paragraphs One to Five, inclusive, of this answer to Count II of the complaint, this respondent hereby incorporates the answers which it has given hereinbefore to Paragraphs One to Five, inclusive, of Count I of the complaint.

Paragraph Six: This respondent denies that destination prices are not the actual prices within the meaning of the Clayton Act, as amended by the Robinson-Patman Act, and further denies that price discrimination can be determined or measured in terms of the amount which the seller nets in different transactions. This respondent denies that it has participated in any price discrimination or that it has done anything tending to eliminate price competition. It denies each and every allegation of Paragraph Six.

Paragraph Seven: As to the allegations of Paragraph Seven, this respondent is without knowledge of the facts relating to the illustrations therein contained, and the same appear to this respondent to be purely hypothetical and artifical, and therefore this respondent denies each and every allegation contained in Paragraph Seven of Count II of the complaint.

Paragraph Eight: This respondent denies each and every allegation of Paragraph Eight of Count II of the complaint.

Paragraph Nine: This respondent denies each and every allegation of Paragraph Nine of Count II of the complaint.

Except as hereinabove set forth, this respondent denies each and every allegation of Count II of the complaint.

Wherefore, this respondent asks that the complaint of the Federal Trade Commission in this regard against it be forthwith dismissed.

Edward A. Zimmerman,
Harold W. Norman,
111 West Monroe Street,
Chicago, Illinois.
Attorneys for Marquette Cement Manufacturing Company, Producing Respondent.

UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 13th day of October, A. D., 1937.

Commissioners:

William A. Ayres, Chairman,
Garland S. Ferguson, Jr.,
Charles H. March,
Ewin L. Davis,
Robert E. Freer.

* * (Caption 3167) * *

(Entered Oct. 13, 1937.)

ORDER APPOINTING EXAMINER AND FIXING TIME AND PLACE FOR TAKING TESTIMONY.

This matter being at issue and ready for the taking of testimony, and pursuant to authority vested in the Federal Trade Commission, under an Act of Congress (38 Stat. 717; 15 USCA, Section 41).

It Is Ordered that John W. Norwood, an examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law;

It is Further Ordered that the taking of testimony in this proceeding begin on Tuesday, November 9, 1937, at 10 o'clock in the forenoon of that day (eastern standard time), in the Main Hearing Room of the Federal Trade Commission Building, (first floor) 815 Connecticut Avenue, N. W., Washington, D. C.

Upon completion of testimony for the Federal Trade Commission, the examiner is directed to proceed immediately to take testimony and evidence on behalf of the respondent. The examiner will then close the case and make his report.

By the Commission:

(SEAL) Otis B. Johnson,
Secretary.

UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 14th day of October, A. D. 1937.

Commissioners:
William A. Ayres, Chairman,
Garland S. Ferguson, Jr.,
Charles H. March,
Ewin L. Davis,
Robert E. Freer.

** (Caption 3167) * *

(Entered Oct. 14, 1937.)

Whereas, attorneys for respondents The Monarch Cement Co. and Idaho Portland Cement Co. have requested permission to file amended answers on behalf of said respondents and have submitted same for that purpose, and the Commission being fully advised in the premises:

It Is Hereby Ordered, That the said amended answers are received, filed and substituted for the original answers heretofore filed by said respondents.

By the Commission.

(SEAL) Otis B. Johnson,
WBW:EN *Secretary.*

UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 8th day of December, A. D. 1937.

Commissioners:
William A. Ayres, Chairman,
Garland S. Ferguson, Jr.,
Charles H. March,
Ewin L. Davis,
Robert E. Freer.

* * (Caption 3167) * *

(Entered Dec. 8, 1937.)

ORDER ACCEPTING AMENDED ANSWER OF SPOKANE PORTLAND CEMENT COMPANY.

Whereas, under date of December 1, 1937, respondent Spokane Portland Cement Company has filed an amended answer in the above entitled cause and asks that it be substituted for its original answer filed on September 21, 1937, and whereas counsel for the Commission offers no objections and the Commission being fully advised in the premises;

It Is Hereby Ordered that the amended answer of the Spokane Portland Cement Company be received, accepted and filed in substitution of its original answer.

By order of the Commission.

(SEAL) Otis B. Johnson,
WBW:JSB *Secretary.*

UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 10th day of May, A. D. 1938.

Commissioners:

Garland S. Ferguson, Jr., Chairman,
Charles H. March,
Ewin L. Davis,
William A. Ayres,
Robert E. Freer.

* * (Caption—3167). * *

(Entered May 10, 1938.)

ORDER CONDITIONALLY DENYING RESPONDENTS' MOTION TO SET ASIDE THE RULING OF TRIAL EXAMINER.

Whereas under date of April 7, 1938, counsel for respondent Institute filed motion to set aside ruling of the Trial Examiner admitting in evidence Commission's Exhibits 1043-A to 5-H inclusive, asking oral argument thereon, and

Whereas oral argument was had and briefs were submitted by opposing counsel on April 25, 1938, and the Commission being duly advised in the premises,

Now Therefore Be It Ordered that the motion of counsel for respondent Institute be and hereby is denied insofar as said motion is based upon the objection that the documents in question are incompetent, irrelevant and immaterial; provided that the Trial Examiner be and hereby is instructed to exclude such of said documents as are not shown to be the best available, contemporaneous documentary record of the matters contained therein, after allowing reasonable opportunity for counsel for the Commission to offer the best available documentary evidence.

By the Commission.

(Seal)

Otis B. Johnson,
Secretary.

BEFORE THE FEDERAL TRADE COMMISSION.

* * (Caption—3167) * *

(Dated June 23, 1939.)

To the Honorable Federal Trade Commission:

Now comes the Huron Portland Cement Company, one of the respondents in the above entitled cause, and, reserving all right to make other and further defense to the Complaint in said cause, moves that Count I of said Complaint be dismissed as to said respondent for the reason that the proofs of the complainant do not sustain, as against said respondent, the charges set forth in said Count I of said Complaint.

This motion is based on the records and files in said cause and on the specific statement of grounds and reasons entitled "Analysis of the Proofs * * *", hereto attached and made a part thereof.

Respectfully submitted,
Hal H. Smith,
Attorney for Respondent.
Huron Portland Cement Company.

ANALYSIS OF THE PROOFS IN RESPECT TO THE RESPONDENT HURON PORTLAND CEMENT COMPANY, SEGREGATED UNDER THE VARIOUS PARAGRAPHS AND SUB-PARAGRAPHS OF THE COMPLAINT.

(The paragraphs and sub-paragraphs of the Complaint are designated by the corresponding numbers and letters).

1. (a) The proofs show that the respondent Huron Portland Cement Company (hereinafter referred to as respondent Huron) was a member of the Institute. Counsel for the respondent Huron stated on the record that the respondent Huron had resigned and was no longer a member.

(b) The proofs show that Mr. Rooney, Sales Manager of the respondent Huron, was a trustee of the Institute.

(c) The respondent Huron is correctly described in this paragraph.

II. The proofs show respondent Huron to be engaged in the business of manufacturing and selling cement and that it sells cement in interstate commerce.

III. The allegations of this paragraph may be disregarded for the purposes of this motion.

IV. There is no proof that respondent Huron had at any time "a mutual understanding or agreement to employ" the methods and practices described in paragraphs Five to Seven of the Complaint. Witness McIntyre testified (R. 10200) that Mr. Crapo, Secretary-Treasurer of the Huron, stated that he would not go to Allentown for a meeting to discuss "the ironing out of these—basing I mean, these port prices". He testified that Mr. Crapo said that they (referring to the other men in the cement business) did come to Detroit to see him but he did not testify that any agreement was reached as to prices. Asked the question: "Let us get that clear. He made no statement or admission to you that as a result of their coming to Detroit they sat down together and reached an agreement which put the prices up? That you have not testified to?" Answer: "No, I don't believe Mr. Crapo made such a definite statement on that, on any agreement as to prices" (10200). Mr. McIntyre did state that Mr. Crapo said that the prices afterwards were better. This is very far from proof that an agreement had been reached and as a result of that agreement the prices were put up. The prices may have risen by reason of many other things.

Mr. Crapo was on the stand as a witness for the complainant. He was not interrogated as to this conversation with Mr. McIntyre and he stated that at no time had he or his Company ever participated in any agreement as to prices (R. 11392).

V. Respondent Huron makes its own prices at its plants located in Alpena, Detroit, Saginaw, Muskegon, Toledo, Cleveland, Buffalo, Oswego, Milwaukee and Duluth. The testimony is explicit. The Huron Company has been at all times free to make changes of base prices whenever it saw fit to do so. Changes have been made to meet local conditions—conditions that it found in the market. This was so at all its different plants (R. 11392-11396, 12080, Witness Crapo).

It made its own price applicable at all points in the Lower Peninsula of Michigan, disregarding entirely the so-called base prices, for cement sold in Michigan during 1937

(R. 11141-2, 11272—11276 and 11098, Witness Crapo). The reasons for the withdrawal of this so-called Michigan plan are set forth by Mr. Crapo at R. 11275-6.

The proofs as to respondent Huron negative the statement in the last sentence of (a). Respondent Huron sells at plant prices as well as on "delivered prices" (R. 11267-9, 11365-6, Witness Crapo). It sells for example the U. S. Lighthouse Service on the Alpena plant basis (R. 11422-3, Witness Crapo), the Lighthouse Service taking delivery at the plant dock at Alpena. It sold the Fort Peck deliveries of 605,000 barrels, at its Duluth plant price, the United States taking delivery at the Duluth plant dock (R. 11087, 11096, 11455; Com. Ex. 329A-Z R. 1700). See also testimony of Witness Rice (R. 1699-1707, 1716, 1717).

The bids of respondent Huron on the Government lettings in the spring of 1938 were made on the plant price basis (R. 11445-6 Witness Crapo).

The Commission's Exhibits 2633, 2635, 2637, 2638, 2639, 2640, and 2641, Huron invoices, which were produced under the subpoena *duces tecum* dated December 13, 1938, make it perfectly clear that Huron does sell at plant prices. These invoices show both plant and destination prices at the following points: Muskegon, Michigan; Saginaw, Michigan; Detroit, Michigan; Cleveland, Ohio; Milwaukee, Wisconsin; Fargo, North Dakota; Buffalo, New York and Oswego, New York. At Alpena, Michigan, the invoices show sales at plant prices only. These Alpena prices vary both as to sales in cloth and in paper containers. At Superior, Wisconsin the sales were all f.o.b. the Duluth plant delivery made by truck. At Detroit, Michigan there are also varying prices as to both cloth and paper. The differential between cloth and paper is generally 25c a barrel but this is not entirely uniform. At Cleveland, the differential is 20c a barrel. There are frequent sales at a lower price for delivery in bulk.

Respondent Huron will sell any customer taking delivery at any of its plants at its plant price, with only one restriction, *i.e.*, it desires to know where the cement is going so as to be sure dealer relationships will not be disrupted (R. 11363-11365, 11446-11449, Witness Crapo).

It does not make an additional charge for delivery to trucks (R. 11366, Witness Crapo). It establishes its plant prices with reference to the existing local market (R.

12080) and fixes such prices without any agreement with competitors (R. 11392—11395, Witness Crapo).

(b) There is no proof that respondent Huron constructed or constructs its prices by the method described in this subdivision (See comments on V(a) above).

(c) There is no proof that respondent Huron quotes or charges prices computed as described in this subdivision or on the formula there described. The proof is that it makes its own prices at its different plants, that it sells f.o.b. its plants and that it made a flat or uniform price applicable throughout the Lower Peninsula of Michigan without any reference to any so-called basing point prices (See comments on V (a) above).

(d) The proof is that respondent Huron does not make prices identical with all other respondents. In two cases it did quote on U. S. Government projects prices which were apparently identical with those of other producer. In one of these, the Fort Peck project (1936), the terms of the Huron bid (and these terms affect the price) differed from the terms of the other producers, making the actual price quoted by respondent Huron different from those quoted by other producers. Respondent Huron then sold the Government 605,000 barrels of an emergency contract at a price of approximately twenty-three cents per barrel less than the prices bid by other producers on the public letting, making delivery at Duluth so that the Government shipped therefrom on its land grant rates (Com. Ex. 329 A-Z, R. 1700).

The testimony as to the Fort Peck bids and contract will be found at the following record pages:—Witness Rice, 1516-1528, 1630, 1635-17-18; Witness Crapo, 11087-11096, 11195-11197, 11455. See also Com. Ex. 418 a-d, 164 a-dd, 165, 166, 167 a-g, 168 a-g, 169 a-m, 329 a-z and Resp. Ex. 18 a-e.

In the other case, the Tygart River project (January and February, 1935) respondent Huron's bids were identical with other bids. It bid on the first letting $1.84 per barrel, the same price as that of other producers. The bids were rejected. On the readvertisement, it bid $1.77 per barrel, the same price as that of others. The bids were again rejected and the contract was again readvertised. Respondent Huron did not bid again. This letting took place during the Code period and Huron filed its prices with the Code authority.

In the 1938 spring letting by the United States, respondent Huron's bids were different from those of the other mills (R. 11445-6). They were on the mill or plant basis.

In the Lower Peninsula of Michigan market Huron in 1937 set its prices without reference to basing points or plant location (See V(a) above).

VI. Of the "illustrative examples" set forth in this paragraph respondent Huron bid only on the first, *i. e.*, the Fort Peck project. (See V(d) above). It sold United States this 605,000 barrels at a price approximating twenty-three (23) cents per barrel less than the prices bid by competing cement mills on the letting of June 10, 1936. (Witness Rive, R. 1701-1706). The respondent Huron did not bid on any of the purchases of the Oklahoma State Highway Commission listed in this paragraph.

VII. (a) There is no proof that respondent Huron had any part in the preparation or distribution of the rate books described in (a) of this paragraph. There is no proof that respondent Huron used or uses said rate books. There is no proof that respondent Huron has, with other producers, any understanding as to such rate books as is described in said paragraph.

(b) There is no proof that respondent Huron regards trucks as a menace to the pricing system or that it has resorted to any means to prevent the use of trucks by customers. The proof is exactly the contrary. Witness Cree admitted that the plants which shipped by boat were in favor of trucking. (R. 831, Com. Ex. 422 o is a circular of respondent Huron dated March 10, 1933, enclosing quotations optional for either rail or truck delivery. It states that a dealer can send his own truck to the plant. Huron advocates the use of trucks and uses them at all its plants. It initiated their use for the delivery of cement sold by it at Cleveland and Oswego. (R. 11261-3, 11278, 11279, 11369-70, Witness Crapo). Such practice has been continued and extended (R. 11044-5, 11055, 6, Witness Crapo). The area of truck deliveries at Toledo, Cleveland and Oswego has been modified and changed at times, but not because of any agreement with competitors (R. 11124, Witness Crapo). At Detroit upwards of 98.6% (1938 to October 1) of the cement sold by it is delivered by truck. Respondent's Exhibits 63, a, b, give the percentage of truck deliveries at its various plants. For all points 72.1 of its cement was delivered by truck in 1938. Huron does

not anywhere forbid the loading of cement on trucks. The limits within which it makes deliveries by truck are set by the effective and economical use of the truck (R. 11042-4, Witness Crapo). In Witness Crapo's opinion the operation is proper in a radius of forty (40) miles (R. 11260-11261). There is no proof that Huron ever made a charge of fifteen (15) cents for truck delivery. There was a five (5) cent differential in effect at one time at Oswego. It was justified by Witness Crapo as a fair charge for the saving made possible to the dealer (R. 11456). It was filed with the Code Authority (Institute Trade Practice Committee) September 18, 1935 (Com. Ex. 425a). In the Code period June 16, 1933 to May 27, 1935, the respondent Huron filed with the Code authority its prices at Duluth, Milwaukee, Cleveland and Toledo, FOB trucks without restriction (R. 17104, 17107, Witness Reiter). During the Code period there were discussions with Aetna as to trucking in Michigan, but there was no agreement in respect thereto. Witness Cree (R. 833) emphasized that respondent Huron would not agree to anything. Witness Crapo said (R. 11190, 11276-77) that Huron and Aetna never agreed on policies or principles. Aetna trucking practices were essentially different from Huron's. (Compare Aetna's Com. Ex. 39, 2202 and Huron's Com. Ex. 422 o.) At R. 10201-2, Witness McIntyre testified that Mr. Crapo told him Huron made delivery either by rail or truck at same price, but Aetna charged 10 cents extra for truck. The extension of respondent Huron's trucking operation met with opposition and criticism from other mills, the so-called rail mills, but Huron continued the use of the trucks in spite of opposition (R. 11055-9, 11124, 11263-5, 11278-9).

(c) There is no proof that respondent Huron has taken any cooperative measure by use of any provisions in their contract forms to eliminate diversions in transit. Its position as to such diversions was explained by Witness Crapo (R. 14448).

(d) There is no proof that respondent Huron has deprived the United States of the benefit of land grant rates. In the only instance on the record where land grant rates applied to a Huron shipment, the Fort Peck contract, respondent Huron made delivery at its Duluth plant and the United States shipped from there using its land grant rates. (Witness Rice, R. 1706).

The only other government project on which respondent Huron bid was the Tygart River Dam. The Tygart specifications called for delivery f.o.b. the dam site and respondent Huron bid without any so-called "control clause" (see bids of January 18, 1935 and February 1, 1935; also Com. Ex. 178-a, c and Res. Ex. 193, 194, (Witness Rice, R. 1574-5, 1630-1633)).

(e) There is no proof that respondent Huron participated in any attempt as described in this subdivision. Respondent Huron's attitude as to cement dealers is stated by Witness Crapo at R. 11364. It prefers to sell to dealers but the proof shows that it has not participated in any understanding to limit sales to dealers. It has in fact made several exceptions and sells direct to others than dealers (R. 11364-7 Witness Crapo).

(f) There is no proof that respondent Huron has entered into any understanding or agreement as described in this subdivision. See (e) above.

(g) There is no proof of the terms of sale and discounts of respondent Huron much less any proof that they are uniform with those of other respondents.

(h) There is no proof connecting respondent Huron with any of the matters set forth in this subdivision.

(i) There is no proof that the respondent Huron participated in any effort or activity on the part of the institute in the "interpretation of policies of cement companies, etc." as charged in this subdivision. Exhibit 418-a-g, the letter from Mr. Crapo to Mr. Affleck shows that the understanding of Huron was that there was no power or authority in the Institute that would interpret and determine such policies (see Com. Ex. 418 a-g, R. 11269 et seq. 11287-90). During the Code period, Code activities were administered by the Code authority and respondent Huron participated in these Code activities. Insofar as these activities were concerned with the interpretation and formulation of policies and insofar as Huron officials participated in them, respondent Huron had knowledge of such activities. This, however, does not prove the assertion that it was a frequent practice on the part of respondent Huron "to refer questions of policies to the Institute or to a division or office of the Institute." (See also witness Crapo at R. 11269-11271, 11390-11391).

(j) There is no proof whatever in the record connecting Huron with any advertisements of the character charged in this subdivision (j).

There is no proof in the record that respondent Huron used any other means and practices as charged in this paragraph.

VIII. The proofs do not show that the respondent Huron "quotes and charges a delivered price to any given customer wherever said customer may be located identical with that quoted and charged to that customer by every other producer adhering to the system." See statements on paragraphs V, VI and VII, above.

(a) The proofs do not show that respondent Huron receives its highest net price "or true price" when it sells to customers located within the area covered by the basing point where its plants are located. The record is barren of figures from which it can be determined where it receives the highest recovery at its mill or at its various plants. There is no proof that the respondent Huron refrains from reducing its prices in the territory where it receives its highest net price so as to obtain or hold its most profitable business. There is no proof that respondent Huron reciprocally with other producers refrains from price competition. There is no proof that it offers such price concessions "as might make it impracticable for more distant producers to obtain the business" because of the greater freight cost which would necessarily be incurred in delivery from its mills. The history of Michigan prices demonstrates that the contrary is true. There is no proof that respondent Huron sells in the vicinity of mills of other producers without encountering any delivered price competition from other producers. It sells throughout Michigan and there meets the competition of other Michigan mills. The proof is that respondent Huron sells in competition with other producers in all the territory adjacent to its several plants. It in fact entered as a competitor the market at each of the Lake ports when it established its several plants at such ports. It competes in Duluth with the Steelton (Duluth) mills; at Milwaukee it competes with Universal Atlas, and others, at Cleveland with Medusa, Standard and Bessemer. There is no proof that other respondents sell in the vicinity of plants of the respondent Huron without encountering any delivered price competition from the respondent Huron. The proof is to the contrary (R. Witness Crapo 11144; Witness Cree, 615, 729-738). There is no proof that Huron does "non-competitively transport" its cement "beyond the succes-

sive localities of other producers'' mills into far distant points of consumption.'' The product of respondent Huron is transported, not by rail, but by boat from its principal mill at Alpena to its plants at other points on the Lakes and at such points it sells its products in competition with that of other producers (R. Witness Crapo 11038-11040, 11242-11256).

(b) There is no proof in the record that respondent Huron's prices are ''placed high enough to permit them often to defray much higher amounts of actual freight than the amount of freight from the government basing point to destination.''

(c) There is no proof that any ''pricing system nullifies the effect of low costs'' of the respondent Huron or that it is an influence and check upon respondent Huron's prices. There is no proof that the respondent Huron shares territory wherein it obtains its ''highest net price with far distant producers.'' There is no proof that the prices charged by respondent Huron are made with ''little regard to varying local conditions of supply and demand.'' The proof is to the contrary (R. 11273-11276, 11455, 11392-11396 Witness Crapo). There is no proof that respondent Huron's prices are made through a concert of action as charged in said subdivision. The testimony of Witness Crapo (R. 11067) and of Witness Dankel (R. 11343-11344) is to the contrary. There is no proof that respondent Huron maintains or cooperates with any other producer in maintaining ''an artificial price level little related to and not governed by truly competitive conditions.'' There is no proof as to respondent Huron that its prices are higher to the consuming public than they otherwise would be under any other method of pricing.

(d) There is no proof as to respondent Huron of the matters set forth in this subdivision.

(e) There is no proof as to respondent Huron as to the matters set forth in this subdivision.

(f) There is no proof that Huron does not avail itself of its competitive advantages by offering competitive prices. The proof is that Huron has steadily and aggressively pushed the distribution of its cement at all points on the Great Lakes (R. 11039-46, 11234-36, Witness Crapo), and that it has done so in the face of bitter competition.

(g) There is no proof connecting respondent Huron with the allegations of this subdivision. On the contrary,

the proof is that respondent Huron is free to make and does make actual delivery by highway and waterway, at its option; that all of its cement moves by water from its main mill at Alpena to its plants on the Great Lakes, at Duluth, Milwaukee, Muskegon, Saginaw, Detroit, Toledo, Cleveland, Buffalo and Oswego and that each of these plants distribution is made by truck. Res. Ex. 63 a-b sets forth the percentage of truck deliveries as against rail deliveries year by year. The truck deliveries predominate. In 1934 out of the total sales, 55% reached the ultimate consumer by truck; in 1935 60.7%; in 1936 51.3%; in 1937 55.6%; and in 1938 to October, 72.1%.

(h) There is no proof that respondent Huron deprives in any way any agency of the Federal Government of the advantages of direct buying. The proof is that it bids on government jobs direct, gives the advantage of land grant rates, bids plant prices, and permits delivery at the plant and gives option of truck or rail or water deliveries (See *supra*, V a, VII, b, d, and VIII a.)

(i) There is no proof in the record connecting respondent Huron with the allegations of this paragraph. It has made competitive price quotations (witness the public letting in 1938, R. 11445-6, Witness Crapo) and has sold to the Government direct at prices quoted f.o.b. mills (Witness the Fort Peck contract—Exhibits 329 a to z, R. 11455, Witness Crapo; R. 1706, Witness Rice). It has not cooperated to bring about the elimination of competitive price quotations. There is no proof of its evading the laws requiring competitive bids and no proof connecting it with the cement mill in South Dakota.

(j) There is no proof connecting Huron with the allegations in this paragraph. The record does not show that it has received any share of funds appropriated by Congress except possibly by reason of its sale to the Government on the Fort Peck contract where it sold f.o.b. its Duluth plant at approximately 23% less than the quotation of other mills (R. 1705), Witness Rice, and in the Government's lettings of 1938 where its plant prices were less than those quoted by the other mills. The sales to the Lighthouse Service were at plant prices at its plant at Alpena (R. 11422-11423, Witnes Crapo).

IX. There is no proof specifically charging Huron with any of the allegations of the above paragraph. The proof as to respondent Huron is that it contributes to the estab-

lishment of competitive prices; that it is a competitive force in bringing about competition in prices, (Witness Crapo R. 11141-2, 11272, 11276, and 11098) that it is a well equipped and well conducted producer located at the source of its raw materials and having the advantage of water transportation, and that it has made use of these advantages in active competition with other producers (R. 11039-11046, 11234-11236, Witness Crapo). There is no proof that it or its practices have lessened the demand for cement. It has steadily extended its distribution and developed the demand for its product. It has not contributed to the lessening of employment either in the cement industry or elsewhere. The effect of its competition has not been to raise the cost of public roads, projects and private structures. Its competition has had the effect of discouraging the development of excess capacity in other mills. The availability of its raw materials at its plant, the use of water transportation from Alpena to the various plants at Great Lakes ports, the use of trucks for delivery to the consumer, the establishment of independent prices, both to the public and the Government, are efforts on its part to discourage the development of excess capacity on the part of other producers.

Some point was made on the apparent limitation of the application of respondent Huron's price at its Wyandotte plant to territory in Michigan as against territory outside of Michigan, such as Ohio and Indiana. That this was not an arbitrary determination is explained by Witness Crapo at R. 11154. Respondent Huron established the Wyandotte base but it had no business in Ohio, and therefore the Wyandotte base was ineffective beyond the state line. Later, when respondent Huron established a plant in Toledo, the Toledo price became the base for territory surrounding Toledo which could be served from that point on advantageous freight rates.

The establishment of the Wyandotte base and its limitation were acts in competition done by respondent Huron without consultation or agreement between it and other producers. (Testimony of Witness Crapo, R. 11153-4).

The maps furnished by Mr. Crapo to Witnesses McIntyre and Tackett of the Federal Trade Commission graphically illustrate the operation of cement prices in connection with freight rates. Exhibits 1372, 1373, 1375, 1376, 1378 and 1380 show the effective change in prices at various

dates. A comparison of these maps exhibits a frequent change in Michigan cement prices during the years 1932 and 1933. Exhibit 1375 shows that respondent Huron, by means of the Wyandotte price, controlled practically all of the Lower Peninsula of Michigan south of a line extended westward from Bay City, Michigan, that it controlled the prices in the northern part of the Lower Peninsula through the Alpena price, and that the Buffington mill made the price in the southwestern part of the State. This is the situation on August 23, 1932. On December 16, 1932; the Buffington price was increased from $1.25 to $1.35. This advance eliminated Buffington from Michigan except in a minute territory in the southwestern section. On March 10, 1933, respondent Huron advanced its Alpena price 20% to $1.40; its Wyandotte price 10c to $1.30, and establish a price at Bay City of $1.35. This restricted the territory controlled by Alpena to a small section in the northern part of the Lower Peninsula, gave the Saginaw plant control of the north central portion of the Lower Peninsula, substantially cut down the territory that Wyandotte could each, and permitted Buffington on its $1.35 price to extend its territory in the southwestern part of the State. On May 1, 1933, the respondent Huron made another change in price reducing the Bay City price from $1.35 to $1.25. This still further reduced the territory controlled by Alpena, reduced the Buffington territory, and took away from the Wyandotte mill a great part of the territory that it had been able to reach, leaving it only that part of eastern Michigan bounded on the west by a line drawn roughly from Port Huron through Pontiac, Jackson and Hillsdale.

These exhibits demonstrate that Huron as an independent producer was making the Michigan price and changing it frequently to meet changing conditions.

X. The Commission alleges involvement of the larger public interest in maintaining competition, buying power, opportunity, etc.

Statement:

There is no proof connecting respondent Huron with the allegations of this paragraph.

XI. Alleges violation of the F. T. C. Act.

UNITED STATES OF AMERICA.

BEFORE THE FEDERAL TRADE COMMISSION.

* * (Caption—3167) * *

(Dated June 23, 1939.)

APPEAL OF HURON PORTLAND CEMENT COMPANY, RESPONDENT.

Now comes Huron Portland Cement Company, one of the respondents in the above entitled cause, and appeals to the Federal Trade Commission from the ruling of the Examiner in said cause, denying the motion of said respondent that the testimony of witnesses Duddy, Hibbard, Fetter and Viner, as particularly specified in said motion by references to the pages of the official transcript on which it appears, be stricken from the record so far as it might be applicable to said respondent, and that it be limited in its application so that it shall not be held applicable to said respondent, said motion being on the ground, among others, that the record shows that the assumptions in the hypothetical questions put to said witnesses are not true as to said respondent.

The said motion of respondent appears in the official transcript of said cause of the hearing held June 21, 1939, at page 22300 thereof (argument at pages 22300-22310, 22379-22390) and the ruling of the Examiner appears at page 22429, etc., of the official transcript of the hearing of June 23, 1939.

The said respondent requests an oral hearing before the Commission on this appeal.

Respectfully submitted,

Hal H. Smith,

Attorney for said respondent, Huron Portland Cement Company.

UNITED STATES OF AMERICA.

BEFORE THE FEDERAL TRADE COMMISSION.

* * (Caption—3167) * *

(Dated June 24, 1939.)

TO THE HONORABLE FEDERAL TRADE COMMISSION:

Each of the respondents in the above proceedings, individually, by their attorneys, hereby petitions the Honorable Federal Trade Commission and shows:

In the course of the proceedings had in the above matter before Honorable John W. Norwood, Trial Examiner, the Federal Trade Commission on June 20, 1939, closed the case offered on its behalf in support of its complaint.

Each item of evidence constituting such case, including testimony and exhibits, was received in evidence throughout the hearings subject to being connected to the respective respondents and to the issues raised by the pleadings, and subject to motions by any respondent to strike and to limit the application thereof.

On June 20, 21 and 22, 1939, each respondent made motions to strike and to limit certain items of evidence on various specific grounds, and argument in support thereof and in opposition thereto was had before the Trial Examiner. The motions, the grounds specified in support thereof, and the argument of counsel appear in the official transcript of proceedings at pages 22078 to 22408, inclusive, and in Respondents' Exhibits 385 to 393, inclusive.

Each of such motions by each of the 75 corporate respondents, The Cement Institute, its officers and trustees, was denied by the Trial Examiner on June 23, 1939. His rulings and stated reasons therefor appear in the official transcript of proceedings for that day.

Being aggrieved by the action of the Trial Examiner, each of the respondents in this cause, individually hereby appeals from each of said rulings to the Federal Trade Commission and petitions the Federal Trade Commission to review the action of the Trial Examiner, to allow a full hearing with respect thereto and to reverse said rulings.

By reason of the error on the part of the Trial Examiner in receiving in evidence testimony and exhibits offered by

counsel for the Federal Trade Commission, which from an examination of the record in the light of the aforesaid motions and grounds therefor, as stated in the aforesaid references to the Record, appear in some cases to be incompetent and immaterial as to all respondents, and in other cases, if material and competent as to some respondents, are incompetent and immaterial as to other respondents and by reason of the voluminous size of the record (the transcript being in excess of 22,000 pages and documentary exhibits being in excess of 28,000 pages), which to a very large extent has been caused by the aforesaid error and the denials by the Trial Examiner of said motions, it is essential that the Commission hold a hearing on the exceptions to and appeals from the rulings of the Trial Examiner as to each of the aforesaid motions, and that each respondent obtain direct rulings from the Federal Trade Commission at this stage of the proceeding with respect to each of the aforesaid motions to strike and to limit, in order that each respondent may be apprised fairly and accurately of the evidence by which it should be bound and to which it must respond by way of refutation or explanation.

Unless the Federal Trade Commission allows these appeals and now grants a hearing thereon as requested, and, itself, at this time, disposes of the aforesaid motions to strike and to limit, each of the respondents at its peril will be compelled to attempt to meet by proof every item of evidence contained in over 22,000 pages of testimony and 28,000 pages of exhibits, most of which said testimony and exhibits, as to it, are clearly incompetent, irrelevant, immaterial, not binding and not of the character of evidence which properly could support any finding of fact. To impose upon any respondent the burden of offering a defense with the record as to the evidence in its present state would manifestly be prejudicial, would unnecessarily prolong the proceedings and put each respondent and the Federal Trade Commission to unnecessary expense and would constitute a deprivation of each respondent's right to a full and fair hearing and due process of law.

Respondents propose that a hearing be set for 2:30 o'clock on Tuesday, June 27, 1939, or as soon thereafter as is convenient to this Honorable Commission. As a part of this petition, the respondents, individually, request that all proceedings in this matter be stayed pending said hearing

and a determination by the Federal Trade Commission of the aforesaid appeals.

Dated: June 24, 1939.

Respectfully submitted,

Donovan, Leisure, Newton & Lumbard,

By George S. Leisure,

Attorneys for The Cement Institute and other respondents.

The following respondents, individually, by their attorneys, join in the above petition and each and every part thereof:

Huron Portland Cement Company,
Beaumont, Smith & Harris,
By Hal H. Smith.

Marquette Cement Manufacturing Company,
Zimmerman & Norman,
By Edward A. Zimmerman.

The following respondents, which, pursuant to the provisions of the stipulation entered into on December 2, 1937, transcript pages 340 to 344, inclusive, made objections to the record and in the alternative moved to strike and to limit, all of which appears in that part of the transcript of proceedings and exhibits to which reference is made in the above petition, hereby, individually, appeal from the rulings of the Examiner overruling said objections and each of them and denying said several motions to strike and to limit and hereby join in the above petition and each and every part thereof:

Beaver Portland Cement Company,
By Herbert W. Clark,

Calaveras Cement Company,
Chickering & Gregory,
By Herbert W. Clark,

California Portland Cement Company,
Call & Murphy,
By Herbert W. Clark,

Northwestern Portland Cement Company,
Weter, Roberts & Shefelman,
By Harold Shefelman,

Pacific Portland Cement Company,
Pillsbury, Madison & Sutro,
By Herbert W. Clark,

Riverside Cement Company,
O'Melveny, Tuller & Myers,
By Herbert W. Clark,

Santa Cruz Portland Cement Company,
Morrison, Hohfeld, Foerster, Shuman & Clark,
By Herbert W. Clark,

Superior Portland Cement Company,
Little & Leader,
By Herbert S. Little,

Yosemite Portland Cement Corporation,
Earl, Hall & Gerdes,
By Herbert W. Clark.

UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 29th day of August, A. D. 1939.

Commissioners:

Robert E. Freer, Chairman,
Garland S. Ferguson,
Charles H. March,
Ewin L. Davis,
William A. Ayres.

(Caption—3167)

(Entered Aug. 29, 1939.)

ORDER GRANTING MOTIONS OF RESPONDENTS TO STRIKE CERTAIN EVIDENCE ON APPEAL FROM RULINGS OF TRIAL EXAMINER AND DENYING SUCH MOTIONS AS TO OTHER EVIDENCE.

Whereas, on June [illegible], 1939, counsel for the majority of respondents and counsel for the Commission were heard orally by the Commission on the appeal of respondents from rulings of the trial examiner denying respondents' motions to strike certain evidence from the record, and

Whereas, on June 20 and 21, 1939, counsel for respondents filed written motions comprising over 2500 pages in which they moved to strike from the record all but 8 exhibits out of a total of over 5000 exhibits received in evidence and the major portions of the oral testimony of practically all of the more than 160 witnesses, and whereas said motions for the most part were restatements and repetitions of objections made and exceptions taken to the rulings of the trial examiner when such exhibits and testimony were received in evidence by him, and whereas the trial examiner heard oral argument on such motions on June 21 and 22, 1939, and denied said motions on June 23, 1939, and

Whereas, the Commission, having considered the

grounds for said motions as stated therein and as orally argued on the appeal from the trial examiner's rulings, the evidence to which said motions relate and the rulings of the trial examiner relating to said motions, and being fully advised in the premises,

Now, Therefore, Be It Ordered:

That the motions be granted in so far as they apply to the following exhibits, which are hereby stricken from the record:

Commission's Exhibits 4 A-B, 5 A-G, 8 A-C, 13, 105 A-C, 106 A-E, 107 A-B, [illegible] A-B, 111 A-E, 112 A-C, 115 A-C, 115 E-G, 118 A, 119 A, 120 A, 121 A-B, 123 A-C, 126 A-C, 131 A-C, 132 A-E, 134 A-B, 135 A, 158 A-E, 350 A, 350 B, 363, A-B, 366 M-N-O, 405 A-B, 405 E-F, 576-6 U, 971-32 C, 1023 A-B, 1023 I-J-K, 1131 E-F, 2847, 2848.

That with the exceptions enumerated in the preceding paragraph and without prejudice to respondents' rights to renew said motions and appeal from the trial examiner's rulings upon final hearing and argument in this proceeding before the Commission, the respondents' motions are denied and the rulings of the trial examiner, as challenged by respondents' appeal and motions to strike, are sustained.

Provided However:

That in so far as the grounds stated in the motions and appeal charge insufficient identification of

(1) Writings which were produced by respondents' counsel in response to subpenas duces tecum served on respondents and calling for production of communications passing between numerous representatives of respondents and their correspondents specified in such subpenas.

(2) Writings which were produced from the files of respondents and which purport to be writings of respondents or representatives of respondents.

(3) Writings produced from the files of persons and firms cooperating with respondents and assisting them in the activities charged in the complaint, and which purport to be the writings of respondents or representatives of respondents to and from such persons and firms.

(4) Writings and documents received by the Federal Trade Commission through the mails from respondents in response to specific written questions propounded by the Commission in general investigations of the cement

industry pursuant to resolutions of the United States Senate and of the Commission, and which purport to be writings of respondents or representatives of respondents, the opportunity continues throughout the remainder of the hearings in this proceeding for the particular respondent or respondents involved to affirmatively and specifically deny authenticity.

By the Commission.

(Seal) A. N. Ross,
Acting Secretary.

UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 29th day of August, A. D. 1939.

Commissioners:

Robert E. Freer, Chairman,
Garland S. Ferguson,
Charles H. March,
Ewin L. Davis,
William A. Ayres.

(Caption—3167)

(Entered Aug. 29, 1939.)

ORDER GRANTING IN PART AND DENYING IN PART MOTIONS OF RESPONDENT MARQUETTE CEMENT MANUFACTURING COMPANY TO STRIKE CERTAIN EVIDENCE.

Whereas, on June 26, 1939, counsel for respondent Marquette Cement Manufacturing Company joined with counsel for other respondents in an appeal from rulings of the trial examiner denying motions to strike certain evidence, and the Commission having considered the grounds stated by said respondent in said motions and appeal and as orally argued by counsel for other respondents before the Commission on June 29, 1939, and being fully advised in the premises,

Now, Therefore, Be It Ordered:

That the motions be granted in so far as they apply to the following exhibits, which are hereby stricken from the record:

Commission's Exhibits 4 A-B, 5 A-G, 8 A-C, 13, 105 A-C 106 A-E, 107 A-B, 110 A-B, 111 A-E, 112 A-C, 115 A-C, 115 E-G, 118 A, 119 A, 120 A, 121 A-B, 123 A-C, 126 A-C, 131 A-C, 132 A-E, 134 A-B, 135 A, 158 A-E, 350 A, 350 B, 363 A-B, 366 M-N-O, 405 A-B, 405 E-F, 576-6 U, 971-32 C, 1023 A-B, 1023 I-J-K, 1131 E-F, 2847, 2848.

That with the exceptions enumerated in the preceding paragraph and without prejudice to respondents' rights to renew said motions and appeal from the trial examiner's rulings upon final hearing and argument in this proceeding before the Commission, said motions be and hereby are denied:

Provided However:

That is so far as the grounds stated in the motions and appeal charge insufficient identification of

(1) Writings which were produced by respondents' counsel in response to subpenas duces tecum served on respondents and calling for production of communications passing between numerous representatives of respondents and their correspondents specified in such subpenas.

(2) Writings which were produced from the files of respondents and which purport to be writings of respondents or representatives of respondents.

(3) Writings produced from the files of persons and firms cooperating with respondents and assisting them in the activities charged in the complaint, and which purport to be the writings of respondents or representatives of respondents to and from such persons and firms.

(4) Writings and documents received by the Federal Trade Commission through the mails from respondents in response to specific written questions propounded by the Commission in general investigations of the cement industry pursuant to resolutions of the United States Senate and of the Commission, and which purport to be writings of respondents, or representatives of respondents,

the opportunity continues throughout the remainder of the hearings in this proceeding for the particular respondent or respondents involved to affirmatively and specifically deny authenticity.

By the Commission.

(Seal)

A. N. Ross,
Acting Secretary.

UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—3167) * *

ORDER DENYING MOTIONS OF NORTHWESTERN PORTLAND CEMENT COMPANY TO EXCLUDE IT FROM THE EFFECT OF CERTAIN EVIDENCE AND GRANTING IN PART AND DENYING IN PART ITS MOTIONS TO STRIKE CERTAIN EVIDENCE.

Whereas, on June 23, 1939, counsel for respondent, Northwestern Portland Cement Company filed written motions to exclude it from the effect of certain evidence, stating therein the grounds for said motions, and whereas, on June 26, 1939, counsel for said respondent joined with counsel for other respondents in appealing from rulings of the trial examiner denying motions to strike certain evidence and to exclude the above named respondent from the effect of certain evidence, and the Commission having considered the grounds stated by the above named respondent in said motions and appeal and as orally argued by counsel for other respondents before the Commission on June 29, 1939, and being fully advised in the premises,

Now, Therefore, Be It Ordered:

That the motions be granted in so far as they apply to the following exhibits, which are hereby stricken from the records:

Commission's Exhibits 4 A-B, 5 A-G, 8 A-C, 13, 105 A-C, 106 A-E, 107 A-B, 110 A-B, 111 A-E, 112 A-C, 115 A-C, 115 E-G, 118 A, 119 A, 120 A, 121 A-B, 123 A-C, 126 A-C, 131 A-C, 132 A-E, 134 A-B, 135 A, 158 A-E, 350 A, 350 B, 363 A-B, 366 M-N-O, 405 A-B, 405 E-F, 576-6 U, 971-32 C, 1023 A-B, 1023 I-J-K, 1131 E-F, 2847, 2848.

That with the exceptions enumerated in the preceding paragraph and without prejudice to respondents' rights to renew said motions and appeal from the trial examiner's rulings upon final hearing and argument in this proceeding before the Commission, said motions be and hereby are denied:

Provided However:

That insofar as the grounds stated in the motions and appeal charge insufficient identification of

(1) Writings which were produced by respondents' counsel in response to subpenas duces tecum served on respondents and calling for production of communications passing between numerous representatives of respondents and their correspondents specified in such subpenas.

(2) Writings which were produced from the files of respondents and which purport to be writings of respondents or representatives of respondents.

(3) Writings produced from the files of persons and firms cooperating with respondents and assisting them in the activities charged in the complaint, and which purport to be the writings of respondents or representatives of respondents to and from such persons and firms.

(4) Writings and documents received by the Federal Trade Commission through the mails from respondents in response to specific written questions propounded by the Commission in general investigations of the cement industry pursuant to resolutions of the United States Senate and of the Commission, and which purport to be writings of respondents, or representatives of respondents, the opportunity continues throughout the remainder of the hearings in this proceeding for the particular respondent or respondents involved to affirmatively and specifically deny authenticity.

By the Commission.

(Seal)

A. N. Ross,
Acting Secretary.

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—3167) * *

ORDER DENYING MOTIONS OF CERTAIN RESPONDENTS TO EXCLUDE THEM FROM THE EFFECT OF CERTAIN EVIDENCE AND GRANTING IN PART AND DENYING IN PART THEIR MOTIONS TO STRIKE CERTAIN EVIDENCE.

Whereas, on June 26, 1939, counsel for respondents Santa Cruz Portland Cement Company, Calaveras Cement Company, Yosemite Portland Cement Corporation, Pacific Portland Cement Company, Riverside Cement Company, and California Portland Cement Company joined with counsel for other respondents in appealing from rulings of the trial examiner denying motions to strike certain evidence and to exclude the above named respondents from the effect of certain evidence, and whereas counsel for said respondents had theretofore filed written motions to the same effect, the Commission having considered the grounds stated by the above named respondents in said motions and appeal and as orally argued by counsel for other respondents before the Commission on June 29, 1939, and being fully advised in the premises,

Now, Therefore, Be It Ordered;

That the motions be granted in so far as they apply to the following exhibits, which are hereby stricken from the record:

Commission's Exhibits 4 A-B, 5 A-G, 8 A-C, 13, 105 A-C, 106 A-E, 107 A-B, 110 A-B, 111 A-E, 112 A-C, 115 A-C, 115 E-G, 118 A, 119 A, 120 A, 121 A-B, 123 A-C, 126 A-C, 131 A-C, 132 A-E, 134 A-B, 135 A, 158 A-E, 350 A, 350 B, 363 A-B, 366 M-N-O, 405 A-B, 405 E-F, 576-6 U, 971-32 C, 1023 A-B, 1023 I-J-K, 1131 E-F, 2847, 2848.

That with the exceptions enumerated in the preceding paragraph and without prejudice to respondents' rights to renew said motions and appeal from the trial examiner's rulings upon final hearing and argument in this proceeding before the Commission, said motions be and hereby are denied:

Provided However:

That insofar as the grounds stated in the motions and appeal charge insufficient identification of

(1) Writings which were produced by respondents' counsel in response to subpenas duces tecum served on respondents and calling for production of communications passing between numerous representatives of respondents and their correspondents specified in such subpenas.

(2) Writings which were produced from the files of respondents and which purport to be writings of respondents or representatives of respondents.

(3) Writings produced from the files of persons and firms cooperating with respondents and assisting them in the activities charged in the complaint, and which purport to be the writings of respondents or representatives of respondents to and from such persons and firms.

(4) Writings and documents received by the Federal Trade Commission through the mails from respondents in response to specific written questions propounded by the Commission in general investigations of the cement industry pursuant to resolutions of the United States Senate and of the Commission, and which purport to be writings of respondents, or representatives of respondents,

the opportunity continues throughout the remainder of the hearings in this proceeding for the particular respondent or respondents involved to affirmatively and specifically deny authenticity.

By the Commission.

A. N. Ross,
Acting Secretary.

(Seal)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—3167) * *

ORDER DENYING MOTIONS OF RESPONDENT SUPERIOR PORTLAND CEMENT, INC. TO DISMISS COMPLAINT AS TO IT OR TO EXCLUDE IT FROM THE EFFECT OF CERTAIN EVIDENCE AND GRANTING IN PART AND DENYING IN PART ITS MOTIONS TO STRIKE CERTAIN EVIDENCE.

Whereas, on June 29, 1939, counsel for respondent Superior Portland Cement, Inc. was heard orally by the Commission in support of motions to dismiss the complaint as to said respondent or to exclude it from the effect of certain evidence, and

Whereas, on June 23, 1939, counsel for said respondent Superior Portland Cement, Inc. filed written motions to exclude said respondent from the effect of certain evidence, stating therein the grounds for said motions, and

Whereas, on June 26, 1939, counsel for said respondent joined with counsel for other respondents in an appeal from rulings of the trial examiner denying motions to strike certain evidence, and the Commission having considered both the oral and written reasons advanced in support of said motions and appeal by counsel for said respondent,

Now, Therefore, Be It Ordered:

That the motions be granted in so far as they apply to the following exhibits, which are hereby stricken from the record:

Commission's Exhibits 4 A-B, 5 A-G, 8 A-C, 13, 105 A-C, 106 A-E, 107 A-B, 110 A-B, 111 A-E, 112 A-C, 115 A-C, 115 E-G, 118 A, 119 A, 120 A, 121 A-B, 123 A-C, 126 A-C, 131 A-C, 132 A-E, 134 A-B, 135 A, 158 A-E, 350 A, 350 B, 363 A-B, 366 M-N-O, 405 A-B, 405 E-F, 576-6 U, 971-32 C, 1023 A-B, 1023 I-J-K, 1131 E-F, 2847, 2848.

That with the exceptions enumerated in the preceding paragraph and without prejudice to respondents' rights to renew said motions and appeal from the trial examiner's rulings upon final hearing and argument in this proceeding before the Commission, the motions of said

respondent to dismiss and to exclude it from the effect of certain evidence be and hereby are denied:

Provided However:

That insofar as the grounds stated in the motions and appeal charge insufficient identification of

(1) Writings which were produced by respondents' counsel in response to subpenas duces tecum served on respondents and calling for production of communications passing between numerous representatives of respondents and their correspondents specified in such subpenas.

(2) Writings which were produced from the files of respondents and which purport to be writings of respondents or representatives of respondents.

(3) Writings produced from the files of persons and firms cooperating with respondents and assisting them in the activities charged in the complaint, and which purport to be the writings of respondents or representatives of respondents to and from such persons and firms.

(4) Writings and documents received by the Federal Trade Commission through the mails from respondents in response to specific written questions propounded by the Commission in general investigations of the cement industry pursuant to resolutions of the United States Senate and of the Commission, and which purport to be writings of respondents, or representatives of respondents,

the opportunity continues throughout the remainder of the hearings in this proceeding for the particular respondent or respondents involved to affirmatively and specifically deny authenticity.

By the Commission.

A. N. Ross,
Acting Secretary.

(Seal)

UNITED STATES OF AMERICA

BEFORE THE FEDERAL TRADE COMMISSION.

* * (Caption—3167) * *

ORDER DENYING MOTIONS OF RESPONDENT HURON PORTLAND CEMENT COMPANY TO DISMISS COMPLAINT AS TO IT OR TO EXCLUDE IT FROM THE EFFECT OF CERTAIN EVIDENCE AND GRANTING IN PART AND DENYING IN PART ITS MOTIONS TO STRIKE CERTAIN EVIDENCE.

Whereas, on June 29, 1939, counsel for respondent Huron Portland Cement Company was heard orally by the Commission in support of previously filed written motions to dismiss the complaint as to said respondent or to exclude it from the effect of certain evidence, and

Whereas, on June 23, 1939, counsel for said respondent Huron Portland Cement Company filed written motions to dismiss or to exclude said respondent from the effect of certain evidence, stating therein the grounds for said motions, and

Whereas, on June 26, 1939, counsel for said respondent joined with counsel for other respondents in an appeal from rulings of the trial examiner denying motions to strike certain evidence, and the Commission having considered both the oral and written reasons advanced in support of said motions and appeal by counsel for said respondent,

Now, Therefore, Be It Ordered:

That the motions be granted in so far as they apply to the following exhibits, which are hereby stricken from the record:

Commission's Exhibits 4 A-B, 5 A-G, 8 A-C, 13, 105 A-C, 106 A-E, 107 A-B, 110 A-B, 111 A-E, 112 A-C, 115 A-C, 115 E-G, 118 A, 119 A, 120 A, 121 A-B, 123 A-C, 126 A-C, 131 A-C, 132 A-E, 134 A-B, 135 A, 158 A-E, 350 A, 350 B, 363 A-B, 366 M-N-O, 405 A-B, 405 E-F, 576-6 U, 971-32 C, 1023 A-B; 1023 I-J-K, 1131 E-F, 2847, 2848.

That with the exceptions enumerated in the preceding paragraph and without prejudice to respondents' rights

to renew said motions and appeal from the trial examiner's rulings upon final hearing and argument in this proceeding before the Commission, the motions of said respondent to dismiss and to exclude it from the effect of certain evidence be and hereby are denied; and that the motions of said respondent to strike certain evidence be and hereby are denied:

Provided However:

That in so far as the grounds stated in the motions and appeal charge insufficient identification of

(1) Writings which were produced by respondents' counsel in response to subpenas duces tecum served on respondents and calling for production of communications passing between numerous representatives of respondents and their correspondents specified in such subpenas.

(2) Writings which were produced from the files of respondents and which purport to be writings of respondents or representatives of respondents.

(3) Writings produced from the files of persons and firms cooperating with respondents and assisting them in the activities charged in the complaint, and which purport to be the writings of respondents or representatives of respondents to and from such persons and firms.

(4) Writings and documents received by the Federal Trade Commission through the mails from respondents in response to specific written questions propounded by the Commission in general investigations of the cement industry pursuant to resolutions of the United States Senate and of the Commission, and which purport to be writings of respondents, or representatives of respondents,

the opportunity continues throughout the remainder of the hearings in this proceeding for the particular respondent or respondents involved to affirmatively and specifically deny authenticity.

By the Commission.

A. N. Ross,
Acting Secretary.

(Seal)

(Caption—3162)

(Received Sept. 5, 1939.)

UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

MOTION TO DISMISS COMPLAINT.

Now, at the close of the case offered by and on behalf of the Federal Trade Commission (hereinafter referred to as the "Commission") in support of its complaint in the above entitled matter, come by their attorneys the Respondents The Cement Institute, S. W. Storey, President, G. H. Reiter, named as Secretary, and the Vice-Presidents, Treasurer and Trustees of The Cement Institute and, having reserved in their answer the right to move to dismiss said complaint for lack of jurisdiction, or for any other reason, hereby move that the said complaint, and each count thereof, be dismissed as to these Respondents, and to each of them, upon each and all of the following grounds:

As to Count I.

1. The Commission is without jurisdiction of the subject matter of Count I of the complaint.

2. Count I fails to state facts sufficient to constitute a cause of action against any of these Respondents under Section 5 of the Federal Trade Commission Act.

3. Count I and Count II constitute a misjoinder of causes of action for the reason that the Commission's respective jurisdictions under the Clayton Act and under the Federal Trade Commission Act may not be exercised by it in a single proceeding.

4. The evidence offered by the Commission fails to establish that this proceeding under Count I is based upon or involves the public interest or is in the interest of the public, as required by Section 5 of the Federal Trade Commission Act.

5. The Commission has failed to prove any violation by any of these Respondents of Section 5 of the Federal Trade Commission Act.

6. The Commission has failed to prove the existence of any combination to hinder, lessen, restrict or restrain

competition in price, as is alleged in Paragraph Four of Count I.

7. The Commission has failed to prove that any of these Respondents has participated in any combination, understanding or agreement, as is alleged in Paragraph Four of Count I.

8. The Commission has failed to prove any of the allegations contained in Paragraph Five of Count I. Moreover, the evidence fails to show that any or all of the acts alleged in said paragraph were done pursuant to or in furtherance of the combination alleged in Paragraph Four of Count I.

9. The Commission has failed to prove any of the allegations contained in sub-paragraph (a) of Paragraph Seven of Count I, except that it appears that the Respondent The Cement Institute has published compilations of official freight rates for shipment of cement in some regions of the United States. Moreover, the evidence fails to show that any or all of the acts alleged in said sub-paragraph were done pursuant to or in furtherance of the combination alleged in Paragraphs Four and Five of Count I.

10. The Commission has failed to prove that any of these Respondents acting in concert with any other Respondent, or otherwise, has engaged in any of the practices alleged in sub-paragraph (b) of Paragraph Seven of Count I. Moreover, the evidence fails to show that any or all of the acts alleged in said sub-paragraph were done pursuant to or in furtherance of the combination alleged in Paragraphs Four and Five of Count I.

11. The Commission has failed to prove that any of these Respondents pursuant to any understandings or agreement with any other respondent, or otherwise, has done any of the acts alleged in sub-paragraph (c) of Paragraph Seven of Count I. Moreover, the evidence fails to show that any of the acts alleged in said sub-paragraph were done pursuant to or in furtherance of the combination alleged in Paragraphs Four and Five of Count I.

12. The Commission has failed to prove that any of these Respondents in cooperation with any other respondent, or otherwise, has done any of the acts alleged in sub-paragraph (d) of Paragraph Seven of Count I. Moreover, the evidence fails to show that any or all of the acts alleged in said sub-paragraph were done pursuant

to or in furtherance of the combination alleged in Paragraphs Four and Five of Count I.

13. The Commission has failed to prove that any of these Respondents arbitrarily or in cooperation with any other respondent or by agreement with any other respondent, or otherwise, did any of the acts alleged in sub-paragraph (e) of Paragraph Seven of Count I, which, among other things, relates to a classification of customers. Moreover, the evidence fails to show that any or all of the acts alleged in said sub-paragraph were done pursuant to or in furtherance of the combination alleged in Paragraphs Four and Five of Count I.

14. The Commission has failed to prove that any of these Respondents arbitrarily, or in cooperation with any other respondent, or by agreement with any other respondent, or otherwise, did any of the acts alleged in sub-paragraph (f) of Paragraph Seven of Count I which, among other things, relates to a definition of a cement dealer. Moreover, the evidence fails to show that any or all of the acts alleged in said sub-paragraph were done pursuant to or in furtherance of the combination alleged in Paragraphs Four and Five of Count I.

15. The Commission has failed to prove that any of these Respondents has entered into any understanding or concert of action as alleged in sub-paragraph (g) of Paragraph Seven of Count I. Moreover, the evidence fails to show that any or all of the acts alleged in said sub-paragraph were done pursuant to or in furtherance of the combination alleged in Paragraphs Four and Five of Count I.

16. The Commission has failed to prove that any of these Respondents pursuant to any understanding or agreement with any other respondent, or otherwise, did any of the acts alleged in sub-paragraph (h) of Paragraph Seven of Count I. Moreover, the evidence fails to show that any or all of the acts alleged in said sub-paragraph were done pursuant to or in furtherance of the combination alleged in Paragraphs Four and Five of Count I.

17. The Commission has failed to prove any of the allegations contained in sub-paragraph (i) of Paragraph Seven of Count I. Moreover, the evidence fails to show that any or all of the acts alleged in said sub-paragraph were done pursuant to or in furtherance of the combination alleged in Paragraphs Four and Five of Count I.

18. The Commission has failed to prove any of the allegations contained in sub-paragraph (j) of Paragraph Seven of Count I. Moreover, the evidence fails to show that any or all of the acts alleged in said sub-paragraph were done pursuant to or in furtherance of the combination alleged in Paragraphs Four and Five of Count I.

19. The Commission has failed to prove any of the allegations contained in Paragraph Seven of Count I.

20. The Commission has failed to prove any of the allegations contained in Paragraph Eight of Count I.

21. The Commission has failed to prove that any of these Respondents either independently or by combination, agreement or understanding with any other respondent, authorized, ordered or did any or all of the acts alleged in Count I.

As to Count II.

22. Each of the grounds of motion numbered 6, 7 and 8, as stated aforesaid, are restated with respect to Count II.

23. The Commission is without jurisdiction of Count II of the complaint.

24. Count II fails to state facts sufficient to constitute a cause of action against any of these Respondents under Section 2 of the Clayton Act.

25. The Commission has failed to prove any of the allegations contained in Count II.

26. Count I and Count II constitute a misjoinder of causes of action for the reason that the Commission's respective jurisdictions under the Clayton Act and under the Federal Trade Commission Act may not be exercised by it in a single proceeding.

27. The Commission has erred in prosecuting Count II under powers conferred upon it by the Federal Trade Commission Act, for the reason that Count II alleges a violation of Section 2 of the Clayton Act which the Commission is authorized to enforce only by virtue of the authority granted and pursuant to the manner prescribed in Section 11 of the Clayton Act.

28. The Commission has rested its case without introducing any proof with respect to Count II in that, among other things, it has purported to receive evidence at hearings before an examiner pursuant to Section 9 of the Federal Trade Commission Act, instead of receiving evidence at hearings before the Commission itself pursuant to Section 11 of the Clayton Act.

This motion is made upon the premise that it is the practice of the Commission to entertain motions by a respondent to dismiss a complaint at any stage of a proceeding without denying to such respondent a full opportunity to offer evidence on its behalf in the event the motion is denied. Accordingly, this motion, and each and every part of it, is made conditionally upon the aforesaid premise and only to the extent that the making thereof will in no way deprive these Respondents of a full opportunity to offer evidence on their behalf, if this motion is denied, in the same manner in which they would have had a right to offer evidence on their behalf had this motion not been made. If pursuant to the practice which the Commission may prescribe for this proceeding, it cannot entertain this motion by reason of the express conditions under which it is made, these Respondents request that they, by their attorneys, be so advised and be informed as to the practice which the Commission does prescribe in order that they may know what motions are available to them and the conditions which the Commission may impose with respect thereto.

Wherefore, each of these Respondents respectfully prays that Count I, that Count II, and that the Complaint, and each of them, be dismissed as to it.

Respectfully submitted,

Donovan, Leisure, Newton & Lumbard,
By George S. Leisure,
Attorney for the above-named Respondents.

UNITED STATES OF AMERICA.

BEFORE THE FEDERAL TRADE COMMISSION.

* * (Caption—3167) * *

MOTION TO DISMISS COMPLAINT.

Now, at the close of the case offered by and on behalf of the Federal Trade Commission (hereinafter referred to as the "Commission") in support of its complaint in the above-entitled matter, comes by its attorneys the Respondent Aetna Portland Cement Company and, having re-

served in its answer the right to move to dismiss said complaint for lack of jurisdiction, or for any other reason, hereby moves that the said complaint, and each count thereof, be dismissed as to this Respondent upon each and all of the following grounds:

As to Count I.

1. The Commission is without jurisdiction of the subject-matter of Count I of the complaint.

2. Count I fails to state facts sufficient to constitute a cause of action against this Respondent under Section 5 of the Federal Trade Commission Act.

3. Count I and Count II constitute a misjoinder of causes of action for the reason that the Commissioner's respective jurisdictions under the Clayton Act and under the Federal Trade Commission Act may not be exercised by it in a single proceeding.

4. The evidence offered by the Commission fails to establish that this proceeding under Count I is based upon or involves the public interest or is in the interest of the public, as required by Section 5 of the Federal Trade Commission Act.

5. The Commission has failed to prove any violation by this Respondent of Section 5 of the Federal Trade Commission Act.

6. The Commission has failed to prove the existence of any combination to hinder, lessen, restrict or restrain competition in price, as is alleged in Paragraph Four of Count I.

7. The Commission has failed to prove that this Respondent has participated in any combination, understanding, or agreement as is alleged in Paragraph Four of Count I.

8. The Commission has failed to prove any of the allegations contained in Paragraph Five of Count I. Moreover, the evidence fails to show that any or all of the acts alleged in said paragraph were done pursuant to or in furtherance of the combination alleged in Paragraph Four of Count I.

9. The Commission has failed to prove any of the allegations contained in sub-paragraph (a) of Paragraph Seven of Count I, except that it appears that the Respondent The Cement Institute has published compilations of

official freight rates for shipment of cement in some regions of the United States. Moreover, the evidence fails to show that any or all of the acts alleged in said sub-paragraph were done pursuant to or in furtherance of the combination alleged in Paragraphs Four and Five of Count I.

10. The Commission has failed to prove that this Respondent, acting in concert with any other Respondent, or otherwise, has engaged in any of the practices alleged in sub-paragraph (b) of Paragraph Seven of Count I, which, among other things, relates to the delivery of cement by truck. Moreover, the evidence fails to show that any or all of the acts alleged in said sub-paragraph were done pursuant to or in furtherance of the combination alleged in Paragraphs Four and Five of Count I.

11. The Commission has failed to prove that this Respondent pursuant to any understandings or agreement with any other respondent, or otherwise, has done any of the acts alleged in sub-paragraph (c) of Paragraph Seven of Count I, which, among other things, relates to the diversion of cement. Moreover, the evidence fails to show that any of the acts alleged in said sub-paragraph were done pursuant to or in furtherance of the combination alleged in Paragraphs Four and Five of Count I.

12. The Commission has failed to prove that this Respondent in cooperation with any other respondent, or otherwise, has done any of the acts alleged in sub-paragraph (d) of Paragraph Seven of Count I, which, among other things, relates to sales of cement to the United States Government. Moreover, the evidence fails to show that any or all of the acts alleged in said sub-paragraph were done pursuant to or in furtherance of the combination alleged in Paragraphs Four and Five of Count I.

13. The Commission has failed to prove that this Respondent arbitrarily or in cooperation with any other respondent or by agreement with any other respondent, or otherwise, did any of the acts alleged in sub-paragraph (e) of Paragraph Seven of Count I, which, among other things, relates to a classification of customers. Moreover, the evidence fails to show that any or all of the acts alleged in said sub-paragraph were done pursuant to or in furtherance of the combination alleged in Paragraphs Four and Five of Count I.

14. The Commission has failed to prove that this Respondent arbitrarily, or in cooperation with any other re-

spondent, or by agreement with any other respondent, or otherwise, did any of the acts alleged in sub-paragraph (f) of Paragraph Seven of Count I which, among other things, relates to a definition of a cement dealer. Moreover, the evidence fails to show that any or all of the acts alleged in said sub-paragraph were done pursuant to or in furtherance of the combination alleged in Paragraphs Four and Five of Count I.

15. The Commission has failed to prove that any of the terms of sale or discounts of this Respondent have at any time been the result of any agreement, understanding or concert of action between this Respondent and any other respondent, as alleged in sub-paragraph (g) of Paragraph Seven of Count I. Moreover, the evidence fails to show that any or all of the acts alleged in said sub-paragraph were done pursuant to or in furtherance of the combination alleged in Paragraphs Four and Five of Count I.

16. The Commission has failed to prove that this Respondent, pursuant to any understanding or agreement with any other respondent, or otherwise, did any of the acts alleged in sub-paragraph (h) of Paragraph Seven of Count I, which, among other things, relates to imported cement. Moreover, the evidence fails to show that any or all of the acts alleged in said sub-paragraph were done pursuant to or in furtherance of the combination alleged in Paragraphs Four and Five of Count I.

17. The Commission has failed to prove any of the allegations contained in sub-paragraph (i) of Paragraph Seven of Count I. Moreover, the evidence fails to show that any or all of the acts alleged in the said sub-paragraph were done pursuant to or in furtherance of the combination alleged in Paragraph Four and Five of Count I.

18. The Commission has failed to prove any of the allegations contained in sub-paragraph (j) of Paragraph Seven of Count I, which, among other things, relates to the publication of advertisements. Moreover, the evidence fails to show that any or all of the acts alleged in said sub-paragraph were done pursuant to or in furtherance of the combination alleged in Paragraph Four and Five of Count I.

19. The Commission has failed to prove any of the allegations contained in Paragraph Seven of Count I.

20. The Commission has failed to prove any of the allegations contained in Paragraph Eight of Count I.

21. The Commission has failed to prove that this Respondent, either independently or by combination, agreement or understanding with any other respondent, authorized, ordered or did any or all of the acts alleged in Count I.

As to Count II.

22. Each of the grounds of motion numbered 6, 7 and 8, as stated aforesaid, are restated with respect to Count II.

23. The Commission is without jurisdiction of Count II of the complaint.

24. Count II fails to state facts sufficient to constitute a cause of action against this Respondent under Section 2 of the Clayton Act.

25. The Commission has failed to prove any of the allegations contained in Count II.

26. Count I and Count II constitute a misjoinder of causes of action for the reason that the Commission's respective jurisdictions under the Clayton Act under the Federal Trade Commission Act may not be exercised by it in a single proceeding.

27. The Commission has erred in prosecuting Count II under powers conferred upon it by the Federal Trade Commission Act, for the reason that Count II alleges a violation of Section 2 of the Clayton Act which the Commission is authorized to enforce only by virtue of the authority granted and pursuant to the manner prescribed in Section 11 of the Clayton Act.

28. The Commission has rested its case without introducing any proof with respect to Count II in that, among other things, it has purported to receive evidence at hearings before an examiner pursuant to Section 9 of the Federal Trade Commission Act, instead of receiving evidence at hearings before the Commission itself pursuant to Section 11 of the Clayton Act.

This motion is made upon the premise that it is the practice of the Commission to entertain motions by a respondent to dismiss a complaint at any stake of a proceeding without denying to such respondent a full opportunity to offer evidence on its behalf in the event the motion is denied. Accordingly, this motion, and each and

every part of it, is made conditionally upon the aforesaid premise and only to the extent that the making thereof will in no way deprive this Respondent of a full opportunity to offer evidence on its behalf, if this motion is denied, in the same manner in which it would have had a right to offer evidence on its behalf had this motion not been made. If pursuant to the practice which the Commission may prescribe for this proceeding, it cannot entertain this motion by reason of the express conditions under which it is made, this Respondent requests that it, by its attorneys, be so advised and be informed as to the practice which the Commission does prescribe in order that this Respondent may know what motions are available to it and the conditions which the Commission may impose with respect thereto.

Wherefore, this Respondent respectfully prays that Count I, that Count II, and that the Complaint, and each of them, be dismissed as to it.

Respectfully submitted,

Donovan, Leisure, Newton & Lumbard,
By George S. Leisure.
Donovan, Leisure, Newton &
Lumbard, Buckley, Ledyard,
Dickinson & Wright,
Attorneys for the above-named Respondent.

(Motions to Dismiss the Complaint, identical with the above motion made by Aetna Portland Cement Company, were made on the same date by each of the other Petitioners in Case No. 8360).

UNITED STATES OF AMERICA.

BEFORE THE FEDERAL TRADE COMMISSION.

* * (Caption—3167) * *

MOTION TO DISMISS BY CERTAIN RESPONDENTS.

Comes now each of the undersigned Respondents, severally, and, each of said Respondents for itself and severally, and none of said Respondents acting for any of the others or jointly with any of the others, hereby moves that the above entitled proceeding be dismissed as to said Respondent on the grounds severally (1) that neither the whole nor any part of the evidence received herein proves or tends to prove that said Respondent ever at any time entered into any agreement or combination or conspiracy, either express or implied, of any kind or nature whatsoever, with any other Respondent or Respondents herein, or with any other person or persons whomsoever, to fix prices or to lessen competition or to create a monopoly or to restrain trade, or that said Respondent, acting either individually or in combination with any other Respondent or Respondents herein, or with any other person or persons whomsoever, has ever at any time used any unfair method of competition in commerce, either as alleged in the complaint on file herein, or otherwise or at all; (2) that neither the whole nor any part of the evidence received herein tends to show that this proceeding is based on or involves public interest, or is in the interest of the public; and (3) that neither the whole nor any part of the evidence received herein tends to prove that all or any of the practices alleged or described in the complaint on file herein now have or ever had any tendency to injuriously affect the business of any competitor or competitors of this moving Respondent.

The foregoing motion is made severally by each of said Respondents as to each separate count in the complaint, and is also made separately as to the complaint in its entirety, with such force and effect that the question of dismissal as to said Respondent may be ruled upon separately as to each separate count and as to the complaint as a whole.

Said motion is founded upon all of the records, files and proceedings in the above entitled matter, including (but without thereby limiting the generality of the documents and records thus referred to) the complaint, the answer of said Respondent, the Reporter's Transcript of the proceedings taken and evidence received at the hearing before the Trial Examiner, all exhibits received in evidence, all objections and motions made by or on behalf of said Respondent, or which said Respondent is entitled to rely upon, and all orders and rulings at any time made by the Trial Examiner or by the Commission, all of which are hereby incorporated in and made a part of this motion by reference.

Dated ....., 1939.

Santa Cruz Portland Cement Company,
Morrison, Hohfeld, Foerster, Shuman & Clark,
By Herbert W. Clark,
Attorneys for Respondent, Santa Cruz Portland Cement Company.

Calaveras Cement Company,
Chickering & Gregory,
By .....
Attorneys for Respondent, Calaveras Cement Company.

Yosemite Portland Cement Corporation,
Earl, Hall & Gerdes,
By Robert F. Gerdes,
Herbert W. Clark,
Attorneys for Respondent, Yosemite Portland Cement Corporation.

Pacific Portland Cement Company,
By Pillsbury, Madison & Sutro,
Attorneys for Respondent, Pacific Portland Cement Company.

UNITED STATES OF AMERICA.

BEFORE THE FEDERAL TRADE COMMISSION.

(Caption—3167)

MOTION TO DISMISS BY CALIFORNIA PORTLAND CEMENT COMPANY.

California Portland Cement Company hereby makes motions as follows:

1. That the proceedings herein be dismissed as against the Respondent California Portland Cement Company.

2. That Count I of the proceedings herein, the charge under the Federal Trade Commission Act, be dismissed as against the Respondent California Portland Cement Company.

3. That Count II of the proceedings herein, the charge under the Clayton Act, be dismissed as against the Respondent California Portland Cement Company.

The said motions and each of them are made on the ground that upon the facts, as shown by the evidence received herein, and the law, the Commission has shown no right to relief against the Respondent California Portland Cement Company (a motion in the nature of that provided for by subsection (b) of Rule 41 of the Rules of Federal Civil Procedure for the District Courts of the United States), and it would be unfair to said Respondent to subject it to the expense and trouble of presenting a defense where no ground for complaint against it has been shown.

More particularly, the said motions are made upon the ground that the evidence received herein in support of the Commission's complaint is not sufficient to sustain a cease and desist order, or any order or decree, against the said Respondent, and is not sufficient to sustain any finding that said Respondent is using, or has used, any unfair methods of competition in interstate commerce, as alleged in the complaint or otherwise, or that said Respondent is, or has been, guilty of any violation of subdivision (a) of Section 2 of the Clayton Act, as alleged in the complaint or otherwise.

Further and more particularly, the said motion is made upon the ground that the evidence received herein in support of the Commission's complaint is not sufficient to sustain any finding as follows:

Count I.

Paragraph Four:

(a) That Respondent is, or has been, a party to any combination with other Respondents to hinder, lessen, restrict or restrain competition in price among Respondents in the course of their commerce among the states.

(b) That Respondent has been a party to any understanding or agreement to employ, or that it has employed, the methods or practices set forth in paragraphs Five to Seven, inclusive, of the complaint.

Paragraph Five:

That Respondent has employed, either in combination with other Respondents or otherwise, a multiple basing-point system of pricing.

Paragraph Six:

That the examples of bids listed in paragraph Six or introduced into evidence herein, or any of them, are illustrative of, or typical examples of, or similar to, the bidding practices of California Portland Cement Company in bidding to the Federal Government or to state or local authorities.

Paragraph Seven:

That Respondent has used, either pursuant to combination or conspiracy with other Respondents or otherwise, any means or practices referred to in paragraph Seven.

(a) That Respondent has used any freight rate books or information referred to, or similar to those referred to, in said paragraph.

(b) That Respondent has prevented, or endeavored to prevent, the delivery of cement by truck, either in combination or conspiracy with other Respondents or otherwise.

(c) That Respondent has been a party to any combination or conspiracy or general practice to prevent or eliminate diversions of shipments of cement in transit.

(d) That Respondent has refused to sell cement to the Federal Government at f.o.b. mill prices, or has in any manner denied to the Government the benefit of Land Grant rates.

(e) That Respondent has arbitrarily refused to sell

cement directly to certain classes of buyers, or in such respect departed from long-existing marketing customs, or in any manner attempted to prevent other producers from selling direct to any purchaser.

(f) That Respondent has been a party to any combination or conspiracy to limit its sales of cement to "dealers" as arbitrarily defined or otherwise.

(g) That Respondent has fixed its terms of sale or discounts as a result of or pursuant to any mutual understanding or concert of action with other Respondents.

(h) That Respondent has been a party to any conspiracy or action with other Respondents with regard to foreign cement.

(i) That Respondent has fixed its marketing practices in accordance with any action or decision of The Cement Institute or any division or committee thereof, or acted with or through The Cement Institute in formulating or carrying out any marketing or pricing practice.

(j) That Respondent has fixed its prices on a basing-point method, or had any reason to, or done any acts to, defend, promote, or camouflage the basing-point pricing system.

(k) That Respondent has done any act to join in, to carry out, or to promote the alleged combination and conspiracy averred in paragraphs Four and Five.

Paragraph Eight:

That Respondent has adopted, continued or maintained any pricing system described in the complaint, or that the adoption, continuance or maintenance of the pricing system used by Respondent has the effect, or had the effect, to completely, or otherwise, destroy competition in price, or to cause or bring about the effects or results alleged in paragraph Eight.

(a) That Respondent has been, or is, using a pricing system or a method of competition in interstate commerce which has the effect to protect it or its competitors in the markets in the "back-yard" territory of it or its competitors, or which deprives purchasers in the "back-yard" territory of any Respondent of lower prices which might prevail under some other pricing system.

(b) That Respondent has fixed its "mill net price" at a high figure for the purpose, or with the result, that the price based thereon, plus freight, will eliminate competition.

(c) That Respondent maintains a price system which is not the result of the free play of competition with its competitors, or which does not give effect to varying local conditions of supply and demand.

(d) That Respondent has engaged in any acts or practices which have tended to eliminate any trend towards lower price in times of depression or to neutralize the natural economic forces which operate to restore prosperity.

(e) That Respondent has engaged in any acts which have destroyed, or tended to destroy, the benefits which fair competition gives to producers near points of production.

(f) That Respondent has maintained any pricing or marketing system, either in combination with other Respondents or otherwise, which precludes it or any of its competitors with advantages of location near raw materials or with efficient capitalization from increasing their output and giving the public the benefits of low producing costs.

(g) That Respondent has done any act to maintain a system, or has maintained any system, of pricing or marketing which denies to consumers the benefits which could be obtained by low transportation costs by water or by truck.

(h) That Respondent has done any act to maintain, or that it has maintained, a system of pricing or marketing which has resulted in the destruction of competition between producers and wholesale dealers in bidding upon federal jobs.

(i) That Respondent has done any act to maintain or has maintained, any system of pricing or marketing which has imposed greater tax burdens upon governmental agencies by depriving them of any benefits of normal or free competition.

(j) That Respondent has done any act to maintain a system which has given to it or any other Respondent a disproportionate share of funds appropriated by Congress to aid reemployment.

Paragraph Nine:

That Respondent has been a party to any combination of Respondents, or has done any act, which has had any effect to hinder, lessen, restrict or restrain the trade of

any Respondent, or to restrain interstate commerce with respect to cement, or to injure the public, or which has had any effect—

(1) To bring about the disappearance of prices arrived at through normal competition, or to fix prices for the purpose of preserving inefficient units of the industry;

(2) To lessen the demand for cement or the volume of public or private construction;

(3) To lessen the opportunities for employment, either in the cement industry or in the construction industry;

(4) To raise the cost of public or private construction or taxes or rents;

(5) To encourage the development of excess capacity.

Paragraph Ten:

That Respondent has been a party to any combination, or done any act, which has had any effect or tendency to encourage the impairment of competition in other industries, or to bring about monopoly in the cement or any other industry, or to reduce the opportunity freely to enter industry and commerce.

Paragraph Eleven:

That Respondent has been a party to any combination or conspiracy, or has engaged in practices, which have had the effect or tendency to hinder, lessen, restrict or restrain competition in interstate commerce in cement, or which constitute unfair methods of competition within the meaning of the Federal Trade Commission Act.

Count II:

Paragraphs Six and Nine:

That Respondent has discriminated in price between different purchasers of cement, where either or any of the purchases involved were in interstate commerce, within the meaning of the Clayton Act. (It affirmatively appears from the Commission's evidence that if there was any difference in price between different destinations, (a) the difference or discrimination did not have any effect substantially to lessen competition or tend to create a monopoly, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives

the benefit of such difference or discrimination in price, or with customers of either of them, and (b) the difference in price was made in good faith to meet an equally low price of a competitor.

Paragraph Seven:

That the alleged price system purportedly illustrated in paragraph Seven is used, or has been used, by Respondent in sales or offers to sell cement, or that the instances of price differences alleged in said paragraph are in any way the same as, or typical of, or similar to, Respondent's pricing system.

Paragraph Eight:

That any differences in Respondent's prices at different destinations have, or have had, any effect to injure, destroy, or prevent competition in price between Respondent and any other Respondent which sells or offers to sell at the same prices.

The said motion is based upon all of the records, files and proceedings in the above entitled matter, including (but without limiting the generality) the complaint, the answer of said Respondent, the evidence received at the hearing before the Trial Examiner, as shown by the Reporter's Transcript thereof, and all exhibits received in evidence.

Said motion is made hereby and will be presented and argued at a time and place fixed therefor by the Trial Examiner.

Dated June ....., 1939.

Call, Murphey, Davis & Graves,
By Alex W. Davis,
Attorneys for Respondent,
California Portland Cement Company.

BEFORE THE FEDERAL TRADE COMMISSION.

* * (Caption—3167) * *

MOTION TO DISMISS THE NORTHWESTERN PORTLAND CEMENT COMPANY.

Comes now the Northwestern Portland Cement Company, by Weter, Roberts and Shefelman, its attorneys of record, and moves that the above entitled proceeding be dismissed as to this Respondent on the grounds severally:

1. That neither the whole nor any part of the evidence received herein proves or tends to prove that this Respondent at any time entered into any agreement or combination or conspiracy, either expressed or implied, of any kind or nature whatsoever, to fix prices or to lessen competition or to create a monopoly and to restrain trade, or that this Respondent, acting either individually or in combination with any other Respondent or Respondents herein, or with any other person or persons whomsoever, has at any time used any unfair method of competition, either as alleged in the complaint herein or in any other manner.

2. That neither the whole nor any part of the evidence received herein tends to show that this proceeding is based on or involves public interest, or is in the interest of the public.

3. That neither the whole nor any part of the evidence received herein tends to prove that any or all of the practices alleged or described in the complaint filed herein now have or ever had any tendency to injuriously affect the business of any competitor or competitors of this Respondent.

The foregoing motion is made as to each separate count in the complaint and also is made separately as to the complaint in its entirety with such force and effect and with the purpose that the question of dismissal as to this Respondent may be ruled upon separately as to each separate count and as to the complaint as a whole.

This Respondent also moves to dismiss Count 1 and Count 2 separately as to this Respondent, upon the ground that none of the material allegations of either Count 1 or Count 2 of the complaint have been proven as against this Respondent.

This motion is based upon all of the files, records and proceedings of every nature whatsoever in the above en-

titled matter, including the complaint, the answer of the Respondent, the Reporter's Transcript of the proceedings taken and evidence received at the hearing before the Trial Examiner, all the exhibits received in evidence, all objections made by or on behalf of this respondent or which this Respondent is entitled to rely upon, and all orders and rulings made at any time by the Trial Examiner or the Federal Trade Commission, all of which are incorporated in and made a part of this motion by reference thereto.

Dated: June 15, 1939.

Northwestern Portland Cement Company,
By Weter, Roberts & Shefelman,
Its attorneys of record.

BEFORE THE FEDERAL TRADE COMMISSION.

(Caption—3167)

MOTION TO DISMISS COMPLAINT.

Comes now the Respondent Superior Portland Cement, Inc., through Little & Leader, successors to Stratton, Leader, Little & Stratton, its attorneys of record, and hereby moves that the complaint, and each of the Counts thereof, be dismissed as to this Respondent upon the ground that this Respondent is not engaged in interstate commerce and therefore is not subject to the jurisdiction of the Federal Trade Commission, and upon the further ground that approximately 99% of all cement manufactured and sold by this Respondent is consumed within the State of Washington, and that there is no evidence in this proceeding to sustain any of the charges of either Count 1 or Count 2 of the complaint with reference to the sale of approximately 1% of the cement manufactured by this Respondent which is used in Alaska and therefore there is no evidence upon which a Cease and Desist Order could be issued with reference to the sale of cement by this Respondent which later flows in interstate commerce.

This Respondent also moves to dismiss Count 1 of the complaint as to this Respondent upon the ground that neither the whole nor any part of the evidence received herein proves or tends to prove that said Respondent ever at any time entered into any agreement or combination or

conspiracy, either express or implied, of any kind or nature whatsoever, with any other Respondent or Respondents herein, or with any other person or persons whomsoever, to fix prices or to lessen competition, to create a monopoly or to restrain trade, or that this Respondent, acting either individually or in combination with any other Respondent or Respondents herein, or with any other person or persons whomsoever, has ever at any time used any unfair method of competition, either as alleged in the complaint on file herein or otherwise, or at all; and upon the further ground that none of the material allegations of Count 1 of the complaint have been proven against this Respondent; and upon the further ground that neither the whole nor any part of the evidence received herein tends to prove that all or any of the practices alleged or described in the complaint herein, now have or ever had any tendency to injuriously affect the business of any competitor or competitors of this moving Respondent thereupon.

This Respondent also moves to dismiss Count 2 of the complaint as to this Respondent, for the reason that there is no proof to sustain the allegations contained therein with reference to the Clayton Act as amended by the Robinson-Patman Act, as against this Respondent.

This motion is founded upon all of the records, files and proceedings in the above entitled matter, including (but without thereby limiting the generality of the documents and records thus referred to) the complaint, the answer of said Respondent, the Reporter's Transcript of the proceedings taken and evidence received at the hearing before the Trial Examiner, all exhibits received in evidence, all objections and motions made by and on behalf of said Respondent, or which said Respondent is entitled to rely upon, and all orders and rulings at any time made by the Trial Examiner or the Federal Trade Commission, all of which are incorporated in and made a part of this motion by reference thereto.

This Respondent respectfully requests the Federal Trade Commission to set the time and place for argument on its Motion to Dismiss Complaint as it may deem advisable.

Respectfully submitted,

Little & Leader,

Attorneys for Respondent, Superior Portland Cement, Inc.

UNITED STATES OF AMERICA.

BEFORE THE FEDERAL TRADE COMMISSION.

* * (Caption—3167) * *

MOTION OF RESPONDENT RIVERSIDE CEMENT COMPANY TO DISMISS.

Now comes respondent Riverside Cement Company and hereby moves that the above entitled proceeding be dismissed as to it upon each and all of the following grounds, to wit:

1. The evidence herein is wholly insufficient to show, and wholly fails to show, that this respondent has either violated or participated in any violation of the Federal Trade Commission Act or any part, section or provision thereof, either as charged and alleged in Count 1 of the complaint herein or otherwise or at all.

2. The evidence is wholly insufficient to show, and wholly fails to show, that any act or practice of this respondent constitutes an unfair method of competition within the intent and meaning of the Federal Trade Commission Act, either as charged in Court 1 of the complaint herein or otherwise or at all.

3. The evidence is wholly insufficient to show, and wholly fails to show, that this respondent has violated or participated in any violation of either Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, or any part, section or provision of said Act, either as so amended or otherwise or at all.

4. The evidence is wholly insufficient to show, and wholly fails to show, that any act of this respondent constitutes or has constituted an unlawful discrimination in price, either within the intent and meaning of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, or otherwise or at all.

5. Neither the whole nor any part of the evidence received herein proves or tends to prove that this respondent ever at any time entered into any agreement or combination or conspiracy, either express or implied, of any kind or nature whatsoever, with any other respondent or respondents herein, or with any other person or persons

whomsoever, to fix prices or to lessen competition or to create a monopoly or to restrain trade, or that this respondent, acting either individually or in combination with any other respondent or respondents herein, or with any other person or persons whomsoever, has ever at any time used any unfair method of competition in commerce, either as alleged in the complaint on file herein or otherwise or at all.

6. Neither the whole nor any part of the evidence received herein tends to show that this proceeding is based on or involves public interest or is in the interest of the public.

7. Neither the whole nor any part of the evidence received herein tends to prove that all or any of the practices alleged or described in the complaint on file herein now have or ever had any tendency to injuriously affect the business of any competitor or competitors of this respondent.

This motion is based upon the files, records, pleadings and proceedings in the above entitled matter, including specifically but not exclusively the complaint, the answer of this respondent, all proceedings had and evidence received herein before the Trial Examiner, all exhibits received in evidence, all objections and motions made by or on behalf of this respondent or inuring to the benefit of this respondent, all orders and rulings made by the Trial Examiner or by the Commission, and the Reporter's Transcript herein, all of which are by this express reference thereto incorporated in and made a part of this motion as if herein set forth in full.

Dated: May 23, 1939.

Riverside Cement Company,
By O'Melveny, Tuller & Myers,
And Pierce Works,
(Pierce Works)
Attorneys for Respondent,
Riverside Cement Company.

UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—3167). * *

(Entered Sept. 12, 1939.)

At a regular session of the Federal Trade Commission held at its office in the City of Washington, D. C., on the 12th day of September, A. D. 1939.

Commissioners:

Robert E. Freer, Chairman,
Garland S. Ferguson,
Charles H. March,
Ewin L. Davis,
William A. Ayres.

ORDER DENYING MOTIONS OF VARIOUS RESPONDENTS TO DISMISS THE COMPLAINT.

Whereas on September 5, 1939, respondents Cement Institute, Aetna Portland Cement Company, Alpha Portland Cement Company, Arkansas Portland Cement Company, Ash Grove Lime & Portland Cement Company, Beaver Portland Cement Company, Bessemer Limestone & Cement Company, Castalia Portland Cement Company, Colorado Portland Cement Company, Consolidated Cement Corporation, Coplay Cement Manufacturing ompany, Cumberland Portland Cement Company, Dewey Portland Cement Company, Diamond Portland Cement Company, Edison Cement Corporation, Federal Portland Cement Company, Inc., Florida Portland Cement Company, Georgia Cement & Products Company, Giant Portland Cement Company, Glens Falls Portland Cement Company, Great Lakes Portland Cement Corporation, Green Bag Cement Company of West Virginia, Hawkeye Portland Cement Company, Hercules Cement Corporation, Hermitage Portland Cement Company, Idaho Portland Cement Company, Keystone Portland Cement Company, Kosmos Portland Cement Company, Lawrence Portland Cement Company, Lehigh Portland Cement Company, Lone Star Cement Corporation, Medusa Portland Cement Corporation, Missouri Port-

land Cement Company, Monarch Cement Company, Monolith Portland Cement Company, Monolith Portland Midwest Company, National Cement Company, Signal Mountain Portland Cement Company, Southern States Portland Cement Company, Southwestern Portland Cement Company, Spokane Portland Cement Company, Standard Portland Cement Company, Superior Cement Corporation, Nazareth Cement Company, Nebraska Cement Company, Northwestern States Portland Cement Company, Oklahoma Portland Cement Company, Oregon Portland Cement Company, Peerless Cement Corporation, Pennsylvania-Dixie Cement Corporation, Petoskey Portland Cement Company, Pittsburgh Plate Glass Company, Portland Cement Company of Utah, Three Forks Portland Cement Company, Trinity Portland Cement Company, Union Portland Cement Company, Valley Forge Cement Company, Volunteer Portland Cement Company, Vulcanite Portland Cement Company, Wabash Portland Cement Company, West Penn Cement Company, Whitehall Cement Manufacturing Company, and Wolverine Portland Cement Corporation, filed written motions to dismiss the complaint, stating therein the grounds of such motions and the conditions and premises on which said motions are made, and the Commission being fully advised;

Now, Therefore, Be It Ordered that without prejudice to said respondents' right to renew their motions to dismiss upon final hearing of this proceeding before the Commission, and without prejudice to their right to offer evidence in their behalf notwithstanding the filing of such motions and the disposition thereof, said motions be and hereby are denied.

By the Commission.

Otis B. Johnson,
Secretary.

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—3167) * *

ORDER DENYING MOTION OF RESPONDENT CALIFORNIA PORTLAND CEMENT COMPANY TO DISMISS COMPLAINT AND ITS REQUEST FOR ORAL HEARING THEREON.

Whereas on September 5, 1939, the respondent California Portland Cement Company filed a written motion to dismiss the complaint as to it stating therein the grounds of such motion and requesting oral argument thereon, and the Commission being fully advised in the premises;

Now, Therefore, Be It Ordered that without prejudice to said respondent's right to renew its motion to dismiss upon final hearing on this proceeding before the Commission, and without prejudice to its right to offer evidence in its behalf notwithstanding the filing of such motion and the disposition thereof, said motion and request be and hereby are denied.

By the Commission.

Otis B. Johnson,
Secretary.

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—3167) * *

ORDER DENYING MOTION OF RESPONDENT MARQUETTE CEMENT MANUFACTURING COMPANY TO DISMISS COMPLAINT, AND ITS PETITION FOR ORAL HEARING THEREON AND FOR GENERAL CONTINUANCE.

Whereas on September 5, 1939, the respondent Marquette Cement Manufacturing Company filed a written motion to dismiss the complaint as to it, stating therein the grounds of such motion, and also filed a petition in connection therewith requesting (1) an oral hearing thereon, (2) a general continuance of such hearing, and (3) permission to postpone the offering of evidence on behalf of said respondent until after said hearing has been had and said motion disposed of, and the Commission being fully advised in the premises;

Now, Therefore, Be It Ordered that without prejudice to said respondent's right to renew its motion to dismiss upon final hearing on this proceeding before the Commission, and without prejudice to its right to offer evidence in its behalf notwithstanding the filing of said motion and the disposition thereof, said motion and said petition be and hereby are denied.

By the Commission.

Otis B. Johnson,
Secretary.

(Seal)

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—3167) * *

ORDER DENYING MOTION OF RESPONDENT SUPERIOR PORTLAND CEMENT, INC. TO DISMISS COMPLAINT AND ITS REQUEST FOR ORAL HEARING THEREON.

Whereas on September 5, 1939, the respondent Superior Portland Cement, Inc. filed a written motion to dismiss the complaint as to it stating therein the grounds of such motion and requesting oral argument thereon, and the Commission being fully advised in the premises;

Now, Therefore, Be It Ordered that without prejudice to said respondent's right to renew its motion to dismiss upon final hearing on this proceeding before the Commission, and without prejudice to its right to offer evidence in its behalf notwithstanding the filing of such motion and the disposition thereof, said motion and request be and hereby are denied.

By the Commission.

Otis B. Johnson,
Secretary.

(Seal)

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—3167) * *

ORDER DENYING MOTION OF GREEN BAG CEMENT COMPANY OF PENNSYLVANIA TO DISMISS COMPLAINT.

Whereas, on September 5, 1939, the respondent Green Bag Cement Company of Pennsylvania filed a written motion to dismiss the complaint stating therein the grounds of such motion and the conditions and premises on which said motion was made, and the Commission being fully advised:

Now, Therefore, Be It Ordered that without prejudice to said respondent's right to renew its motion to dismiss upon final hearing of this proceeding before the Commission, and without prejudice to its right to offer evidence in its behalf notwithstanding the filing of such motion and the disposition thereof, said motion be and hereby is denied.

By the Commission.

Otis B. Johnson,
Secretary.

(Seal)

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—3167) * *

ORDER DENYING MOTION OF RESPONDENT NORTH AMERICAN CEMENT CORPORATION TO DISMISS COMPLAINT.

Whereas on September 5, 1939, respondent, North American Cement Corporation, filed a written motion to dismiss the complaint, stating therein the grounds of such motion and the conditions and premises on which said motion is made, and the Commission being fully advised;

Now Therefore Be It Ordered that without prejudice to said respondent's right to renew its motion to dismiss upon final hearing of this proceeding before the Commission, and without prejudice to its right to offer evidence in its behalf, notwithstanding the filing of such motion and the disposition thereof, said motion be and hereby is denied.

By the Commission.

Otis B. Johnson,
Secretary.

(Seal)

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—3167 * *

ORDER DENYING MOTION OF RESPONDENT NORTHWESTERN PORTLAND CEMENT COMPANY TO DISMISS COMPLAINT.

Whereas on September 5, 1939, respondent, Northwestern Portland Cement Company, filed a written motion to dismiss the complaint, as to wit, stating therein the grounds of such motion, and the Commission being fully advised in the premises;

Now Therefore Be It Ordered that without prejudice to said respondent's right to renew its motion to dismiss upon final hearing of this proceeding before the Commission, and without prejudice to its right to offer evidence in its behalf, notwithstanding the filing of such motion and the disposition thereof, said motion be and hereby is denied.

By the Commission.

Otis B. Johnson,
(Seal) *Secretary.*

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—3167) * *

ORDER DENYING MOTION OF RESPONDENT RIVERSIDE CEMENT COMPANY TO DISMISS COMPLAINT.

Whereas on September 5, 1939, respondent, Riverside Cement Company, filed a written motion to dismiss the complaint, as to wit, stating therein the grounds of such motion, and the Commission being fully advised in the premises;

Now Therefore Be It Ordered that without prejudice to said respondent's right to renew its motion to dismiss upon final hearing of this proceeding before the Commission, and without prejudice to its right to offer evidence in its behalf notwithstanding the filing of such motion and the disposition thereof, said motion be and hereby is denied.

By the Commission.

Otis B. Johnson,
(Seal) *Secretary.*

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—3167) * *

ORDER DENYING MOTIONS TO DISMISS THE COMPLAINT FILED BY SANTA CRUZ PORTLAND CEMENT COMPANY, CALAVERAS CEMENT COMPANY, YOSEMITE PORTLAND CEMENT CORPORATION, AND PACIFIC PORTLAND CEMENT COMPANY.

Whereas, on September 5, 1939, respondents Santa Cruz Portland Cement Company, Calaveras Cement Company, Yosemite Portland Cement Corporation, and Pacific Portland Cement Company, filed written motions to dismiss the complaint as to them, stating therein the grounds of such motions and the Commission being fully advised in the premises;

Now Therefore Be It Ordered, that without prejudice to said respondents' right to renew their motions to dismiss upon final hearing of this proceeding before the Commission and without prejudice to their right to offer evidence in their behalf notwithstanding the filing of such motions and the disposition thereof, said motions be, and hereby are, denied.

By the Commission,

Otis B. Johnson,
Secretary.

(Seal)

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—3167) * *

ORDER DENYING MOTION OF RESPONDENT UNIVERSAL ATLAS CEMENT COMPANY TO DISMISS COMPLAINT.

Whereas on September 5, 1939, respondent, Universal Atlas Cement Company, filed a written motion to dismiss the complaint, stating therein the grounds of such motion and the conditions and premises on which said motion is made, and the Commission being fully advised;

Now Therefore Be It Ordered that without prejudice to said respondent's right to renew its motion to dismiss upon final hearing of this proceeding before the Commission, and without prejudice to its right to offer evidence in its behalf, notwithstanding the filing of such motion and the disposition thereof, said motion be and hereby is denied.

By the Commission.

Otis B. Johnson,
Secretary.

(Seal)